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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

NEZ PERCE TRIBE,

Plaintiff,

v.

MIDAS GOLD CORP., MIDAS GOLD
IDAHO, INC., IDAHO GOLD RESOURCES
COMPANY, LLC, and STIBNITE GOLD
COMPANY,

Defendant.

Case No.: 01:19-cv-00307-BLW

**DECLARATION OF L. MICHAEL
BOGERT IN SUPPORT OF DEFENDANTS'
MOTION TO STAY LITIGATION (DOC.
15)**

**DECLARATION OF L. MICHAEL BOGERT IN SUPPORT OF DEFENDANTS' MOTION TO STAY
LITIGATION**

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I, **L. MICHAEL BOGERT**, under penalty of perjury, declare and state as follows:

1. I became general counsel for Midas Gold Idaho, Incorporated (“MGII”) in September 2018. Prior to my current position, I was a shareholder at the law firm Parsons Behle & Latimer, and I was also a member of the Board of Directors of Midas Gold Corp. (“MGC”), the parent company of MGII.

2. In my role as a member of the MGC Board, I participated in Board discussions on development of outreach to the State and Federal regulators with permitting and regulatory authority over the development of the Stibnite Gold Project (“SGP”).

3. On June 22, 2017, I attended a meeting in Seattle, Washington with other representatives of MGII and representatives of EPA Region 10. At the meeting, we discussed Clean Water Act (“CWA”) compliance for operations at the SGP. The presentation provided by MGII at the meeting is attached as Exhibit 1.

4. In late 2017 or early 2018, I was advised by personnel at EPA Region 10 that EPA Headquarters was developing a program of outreach for compliance assistance to constituencies in the regulated community, including the mining industry. This program is known as “Smart Sectors,” and I was referred by EPA Region 10 to the lead of the “Smart Sectors” program in Washington, DC.

5. On January 24, 2018, along with MGII CEO Laurel Sayer, I participated in a briefing on the SGP with the Assistant Administrator for the Office of Water at EPA Headquarters in Washington, DC. We discussed the water quality issues that the MGII was seeing in the Stibnite Mining District as a function of data collection for the NEPA review. We were advised by the Assistant Administrator that we should also consider briefing EPA staff

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responsible for developing a task force report for the Administrator on the functionality of the Comprehensive Environmental Response and Liability Act (“CERCLA”).

6. On or around February 27, 2018, I spoke telephonically with the Senior Policy Advisor to the Administrator leading review of information gathering on CERCLA issues for the Office of the Administrator. The following day, February 28, 2018, I briefed the Senior Policy Advisor and other representatives from the Office of the Administrator on CERCLA issues related to the SGP at EPA Headquarters in Washington, DC. Historical mining activity on or near the Stibnite Mining District and other issues regarding re-disturbance of legacy areas within the Project footprint and the potential for cleanup of legacy areas outside of the Project operational footprint were also discussed.

7. On or around March 15, 2018, along with MGII CEO Laurel Sayer and other representatives of MGII, I met with EPA Region 10 staff responsible for CWA compliance for the SGP in Seattle, Washington. The presentation provided by MGII at the meeting is attached as Exhibit 2. Ms. Sayer and I also met with the EPA Regional Administrator and discussed CERCLA issues pertaining to Project operations in addition to the general SGP permitting review schedule.

8. On or around March 28, 2018, I met with the lead of the Smart Sectors program and EPA’s Lead of the EPA National Mining Team at EPA Headquarters in Washington, DC. These EPA representatives confirmed that in addition to working collaboratively with members of the mining industry seeking compliance assistance under the Smart Sectors Program, EPA Headquarters review of CERCLA policy by a task force was underway.

9. On or around March 2018, I met with the Deputy Assistant Administrator for the Office of Land and Environmental Management (“OLEM”) at EPA Headquarters in Washington,

DC. The meeting was attended by others at EPA Headquarters with CERCLA program and enforcement responsibility. At the conclusion of that meeting, the Deputy Assistant Administrator invited MGII to submit a proposed approach to CERCLA compliance for review by EPA.

10. On multiple occasions in the first half of 2018, MGII CEO Laurel Sayer and I communicated and met with representatives in the Office of the Administrator to provide further development and update on an approach to a CERCLA approach for the SGP.

11. On or around late March of 2018, the Office of the Administrator advised us that EPA Region 8 had approved an administrative order on consent (“AOC”) approach for Agnico Eagle, a mining company, authorizing CERCLA remediation activities on a National Priorities List facility in South Dakota, the Gilt Edge Mine Superfund Site. A true and correct copy of that AOC is attached hereto as Exhibit 3.

12. Using the EPA Region 8 approved Gilt Edge AOC, MGII internally developed a “Concept AOC” and draft Statement of Work (“SOW”), which was to be presented to EPA as a theoretical approach to a CERCLA settlement for the SGP.

13. On or about June 5, 2018, MGII CEO Laurel Sayer and I met with the EPA Administrator in Boise, Idaho. We advised the Administrator that the Stibnite Mining District had a significant history of CERCLA legacy issues and that a path to eventual remediation of the site was through approval of the MGII Plan of Restoration and Operations (“PRO”) and a CERCLA regulatory framework.

14. On or about July 25, 2018, MGII CEO Laurel Sayer and I participated in a meeting with EPA Region 10 personnel in the Regional Counsel’s Office to discuss the Concept AOC and provide information on historical legacy areas within and outside of the proposed SGP

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project footprint that would be a part and parcel of the concept. A true and correct copy of the Concept AOC is attached hereto as Exhibit 4.

15. On or about October 24, 2018, I participated in a telephonic video conference briefing with personnel from the Regional Counsel's Office and other EPA Region 10 personnel on the Concept AOC.

16. On or around October 30, 2018, along with MGII CEO Laurel Sayer and MGC CEO Stephen Quin, I participated in a meeting at EPA Headquarters in Washington, DC that included the Assistant Administrator for the Office of Enforcement and Compliance ("OECA") and the Deputy Assistant Administrator for OLEM to discuss an approach to CERCLA compliance.

17. On November 15, 2018, the Assistant Administrator for OECA directed that development of a CERCLA AOC approach be managed by EPA Region 10. A true and correct copy of that electronic communication is attached hereto as Exhibit 5.

18. On or about December 17, 2018, along with MGII CEO Laurel Sayer and MGC CEO Stephen Quin, I participated in a briefing with personnel from EPA Region 10 regarding an appropriate CERCLA regulatory framework to be applied for SGP construction, operations, and closure in Seattle, Washington. Attached hereto as Exhibit 6 is a true and correct copy of the presentation MGII provided EPA Region 10 on that date.

19. On January 9, 2019, MGII CEO Laurel Sayer and I briefed the Director of the Idaho Department of Environmental Quality ("IDEQ") on water quality data being gathered and collected as a part of the SGP NEPA review process in Boise, Idaho. We advised the Director that in some parts of the SGP Project Site, groundwater arsenic level readings from a monitoring well taken in the spring of 2015 detected 5400 ug/L near a smelter waste repository constructed

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by the United States Forest Service near the East Fork South Fork of the Salmon River (“EFSFSR”). By way of comparison, the Criterion Maximum Concentration (“CMC”) Acute Aquatic Life water quality standard is 340 ug/L. A true and correct copy of the document shared with the IDEQ Director on January 9, 2019 is attached hereto as Exhibit 7.

20. Attached as Exhibits 8 & 9 are true and correct copies of February 28, 2019, and August 13, 2019 letters from MGII CEO Laurel Sayer to the Forest Supervisor of the Payette National Forest. Pursuant to MGII’s CERCLA obligations, these letters transmitted supplemental water quality data and alerted the Forest Service of elevated arsenic readings downgradient of the Forest Service smelter waste repository near the EFSFSR as well as the Meadow Creek Valley area in locations downgradient from the Spent Ore Disposal Area (“SODA”) where tailings from milling operations were deposited on Forest Service land during World War II and the Korean War. Similar letters on behalf of MGII were also provided to USEPA and IDEQ in February and August 2019.

21. On March 11, 2019, MGII CEO Laurel Sayer and I briefed the EPA Assistant Administrator for the Office of Water, the Deputy Assistant Administrator for the Office of Water, and the Regional Administrator for EPA Region 10 on water quality and CERCLA issues pertaining to the SGP in Boise, Idaho.

22. As a product of the continued discussions with EPA and the State of Idaho, a draft voluntary consent order (“VCO”)/AOC was developed by MGII and submitted to EPA Region 10 and the State of Idaho for review.

23. Attached hereto as Exhibit 10 is true and correct copy of the draft VCO/AOC which was transmitted to EPA Region 10 on April 30, 2019. The draft VCO/AOC proposed to conduct further site characterization during the work season at the SGP site for 2019 to be

directed at learning more about elevated levels of arsenic that had been detected at one of the MGII groundwater monitoring wells on the site near the Forest Service smelter waste repository. Additionally, the draft VCO/AOC proposed additional site characterization and assessment at an area of the SGP project site known as the “DMEA Dumps.”

24. On or about May 5, 2019, MGII CEO Laurel Sayer and I participated in a conference with the EPA Assistant Administrator for OECA and the Assistant Administrator for OLEM to further discuss the VCO/AOC as an approach to undertake site characterization at EPA Headquarters in Washington, DC.

25. On or about June 5, 2019, MGII was formally served with a Notice of Intent to Bring Suit under the Clean Water Act by the Plaintiff in this action. Plaintiff alleged violations of the Clean Water Act at the SGP Project site, including the two site areas proposed for further site assessment and characterization in the draft VCO/AOC provided EPA on April 30, 2019 (the Forest Service smelter waste repository and the DMEA Dumps).

26. In a letter dated June 13, 2019, EPA declined to authorize MGII to conduct further site characterization in those specific areas as proposed in the draft VCO/AOC referenced above. A true and correct copy of the letter by the Regional Counsel’s Office of EPA Region 10 rejecting the proposed VCO/AOC is attached hereto as Exhibit 11.

27. On November 1, 2019, I participated by conference call in a meeting with EPA Region 10 along with representatives of MGII, IDEQ, the Shoshone-Bannock Tribes and the United States Forest Service to discuss the process by which an AOC addressing the SGP would be developed. Attached hereto as Exhibit 12 is a true and correct copy of a memorandum dated November 7, 2019, that contains a summary of the agreed-upon dates for work product deliverables during the AOC negotiations. This document was circulated by EPA Region 10 to

the other participants in the meeting, and EPA confirmed the agreed-upon dates and deliverables via email transmitting the document on November 12, 2019.

28. Pursuant to the agreed-upon schedule, on November 12, 2019, the Shoshone Bannock Tribes and IDEQ provided comments on the draft SOW. A true and correct copy of the Shoshone Bannock Tribes' comments to the draft SOW are attached hereto as Exhibit 13, and a true and correct copy of IDEQ's comments to the draft SOW are attached hereto as Exhibit 14. The Shoshone Bannock Tribes provided an updated set of comments on the draft SOW on November 13, 2019, attached hereto as Exhibit 15.

I declare under penalty of perjury pursuant to the laws of the State of Idaho and the United States, that the foregoing is true and correct.

Dated: November 13, 2019

/s/ L. Michael Bogert

L. MICHAEL BOGERT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on November 13, 2019, I filed the foregoing document electronically through the CM/ECF system which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic filing:

Amanda Wright Rogerson
Bryan Hurlbutt
Laurence J. Lucas
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
Counsel for Plaintiff

Michael Lopez
NEZ PERCE TRIBE
P.O. Box 305
Lapwai, ID 83540
Counsel for Plaintiff

/s/ Preston N. Carter
Preston N. Carter

EXHIBIT 1

to

Declaration of Michael Bogert



MIDAS GOLD

STIBNITE GOLD PROJECT

IDAHO, USA

MAX.TSX
MDRPF.OTCQX

June 2017

FORWARD LOOKING STATEMENTS

Statements contained in this presentation that are not historical facts are "forward-looking information" or "forward-looking statements" (collectively, "Forward-Looking Information") within the meaning of applicable Canadian securities legislation and the United States Private Securities Litigation Reform Act of 1995. Forward-Looking Information includes, but is not limited to, disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action; and the plans for completion of the Offerings, expected use of proceeds and business objectives. In certain cases, Forward-Looking Information can be identified by the use of words and phrases such as "anticipates", "expects", "understanding", "has agreed to" or variations of such words and phrases or statements that certain actions, events or results "would", "occur" or "be achieved". Although Midas Gold has attempted to identify important factors that could affect Midas Gold and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended, including, without limitation, the risks and uncertainties related to the Offerings not being completed in the event that the conditions precedent thereto are not satisfied; uncertainties related to raising sufficient financing in a timely manner and on acceptable terms. In making the forward-looking statements in this news release, Midas Gold has applied several material assumptions, including the assumptions that (1) the conditions precedent to completion of the Offerings will be fulfilled so as to permit the Offerings to be completed in or about April of 2016; (2) all necessary approvals and consents, including shareholder approval, in respect of the Offerings will be obtained in a timely manner and on acceptable terms; and (3) general business and economic conditions will not change in a materially adverse manner. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, Midas Gold does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this news release to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Forward-Looking Information involves known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Corporation to be materially different from any future results, performance or achievements expressed or implied by the Forward-Looking Information. Such risks and other factors include, among others, the industry-wide risks and project-specific risks identified in the PFS and summarized above; risks related to the availability of financing on commercially reasonable terms and the expected use of proceeds; operations and contractual obligations; changes in exploration programs based upon results of exploration; changes in estimated mineral reserves or mineral resources; future prices of metals; availability of third party contractors; availability of equipment; failure of equipment to operate as anticipated; accidents, effects of weather and other natural phenomena and other risks associated with the mineral exploration industry; environmental risks, including environmental matters under US federal and Idaho rules and regulations; impact of environmental remediation requirements and the terms of existing and potential consent decrees on the Corporation's planned exploration and development activities on the Stibnite Gold Project; certainty of mineral title; community relations; delays in obtaining governmental approvals or financing; fluctuations in mineral prices; the Corporation's dependence on one mineral project; the nature of mineral exploration and mining and the uncertain commercial viability of certain mineral deposits; the Corporation's lack of operating revenues; governmental regulations and the ability to obtain necessary licences and permits; risks related to mineral properties being subject to prior unregistered agreements, transfers or claims and other defects in title; currency fluctuations; changes in environmental laws and regulations and changes in the application of standards pursuant to existing laws and regulations which may increase costs of doing business and restrict operations; risks related to dependence on key personnel; and estimates used in financial statements proving to be incorrect; as well as those factors discussed in the Corporation's public disclosure record. Although the Corporation has attempted to identify important factors that could affect the Corporation and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, the Corporation does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this presentation to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Cautionary Note

The presentation has been prepared by Midas Gold management and does not represent a recommendation to buy or sell these securities. Investors should always consult their investment advisors prior to making any investment decisions.

All references to "dollars" or "\$" shall mean United States dollars unless otherwise specified. Exchange rates and share prices used, where appropriate, are based on the spot prices as of Feb. 19th, 2016.

Presentation Overview

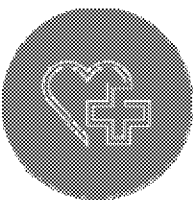
3

- Overview of Midas Gold Stibnite Gold Project
 - How We Got Here
 - Historical Legacy
 - Restoration & Mitigation
 - Surface Mining
 - Ore Processing
 - Tailings Management
 - Monitoring
 - Restoration, Reclamation & Closure
- NPDES Permitting Discussion
 - NPDES Approvals Needed
 - Water-Related Information
 - Issues to Consider
 - Permitting Timeframe
- Open Discussion/Questions



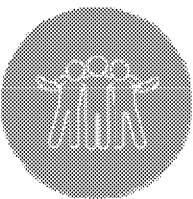
HOW WE GOT HERE

MIDAS GOLD'S CORE VALUES



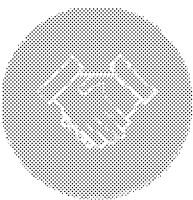
Safety

The health and safety of our employees, contractors and the public is of the utmost importance.



Community Involvement

As a proud part of the community, we actively strive to serve the community's needs, to collectively enhance prosperity and well-being.

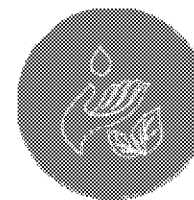


Accountability

As part of our governance, we ensure that accountability guides all of our actions, decisions, conduct and reporting.

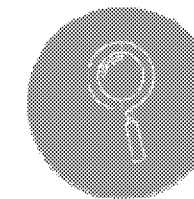
Environmental Responsibility

We go above and beyond what is required; we find practical solutions to manage growth while protecting and enhancing the natural environment.



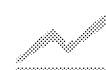
Transparency

We fulfill our commitments in an open and transparent manner. We aim to be accurate, consistent and straightforward in all information delivered to our stakeholders.



Integrity & Performance

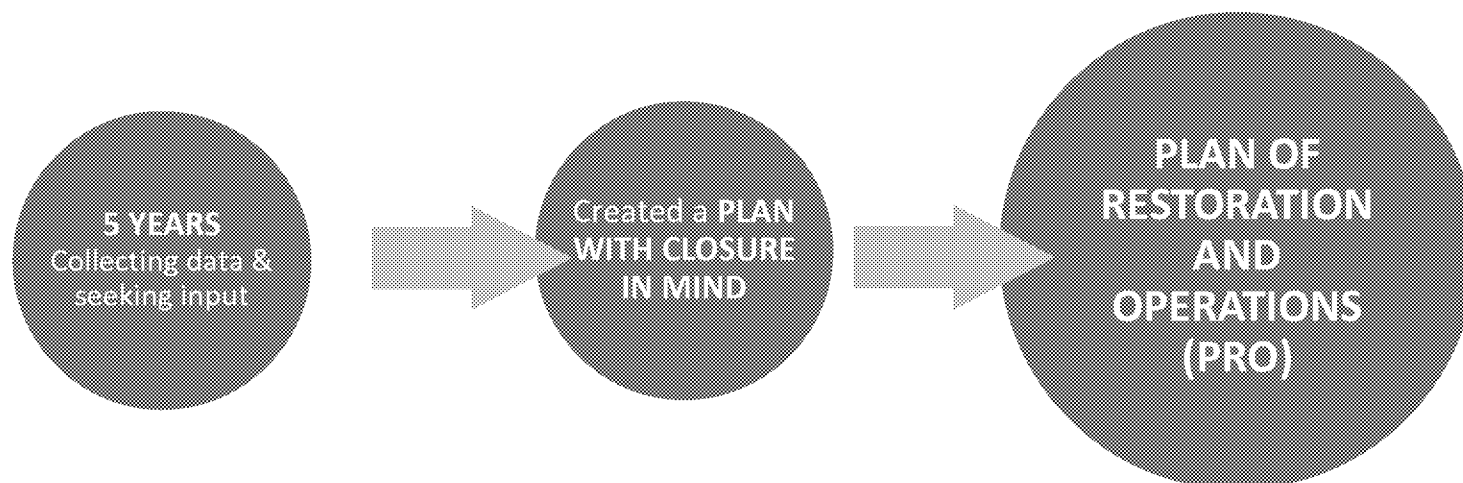
We hold ourselves to high moral standards and strive to fulfill our commitments in an effective and sustainable manner.




HOW WE GOT HERE

6

**Exploration
began in
2009**





PLAN OF RESTORATION & OPERATIONS

The Stibnite Gold Project
BUILT ON THE PRINCIPLE THAT WE CAN

Be Stewards of the Environment
Minimize our Impact
Leave the Area Better





MIDAS GOLD

WE BUILT OUR PLAN WITH CLOSURE IN MIND

We designed our plan to address historical impacts, protect the environment and complete reclamation. We prioritized stream restoration, reforestation, wetland and wildlife habitat construction and enhancement.

STIBNITE GOLD PROJECT

Coeur d'Alene

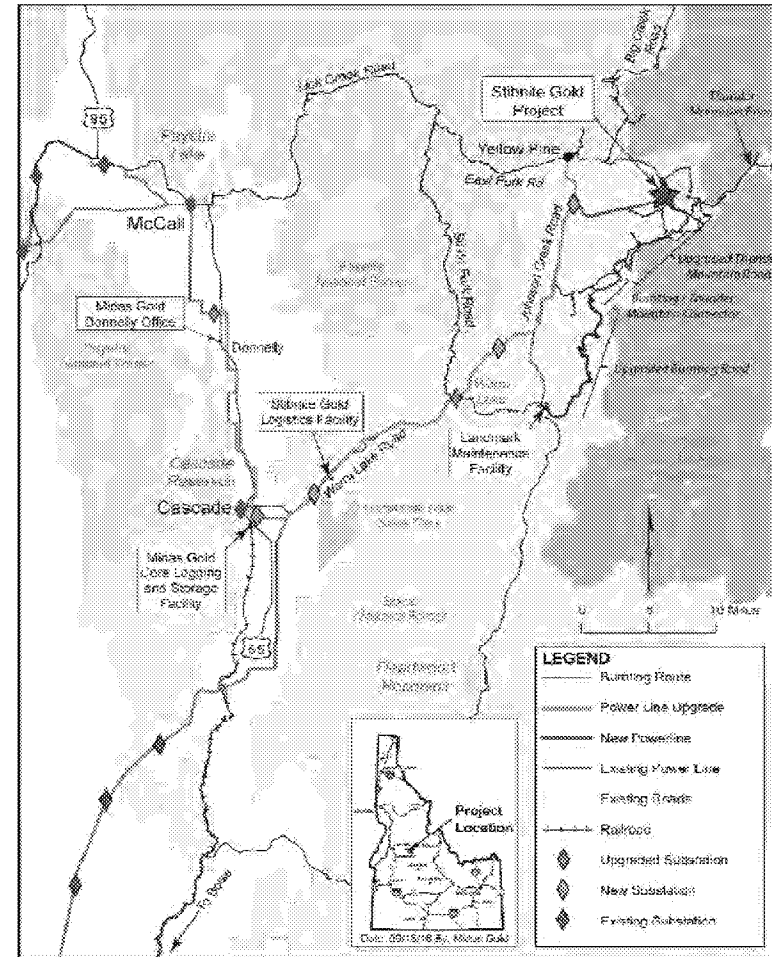
Stibnite Gold Project
Midas Gold Au-Sb

McCall

Cascade

BOISE

IDAHO



A SITE IN NEED OF REPAIR

10.5 million

tons of spent ore and unconstrained tailings left behind

Abandoned open pits, tailings, waste dumps, smelter site, town sites, heap leach pads, contributing to degraded water quality

It would require **massive effort** to **clean-up** the site & get fish back.

Forest fire damage

contributing to erosion and sediment run-off

Hundreds of tons of sediment erode into the river each year.

Fish blocked from spawning area since 1938

OUR PLAN TO RESTORE THE SITE

Repair over

50,000 linear feet of
stream channel

Add natural contouring, **new soil &
vegetation** to foster growth

**Leave natural gradient
& vegetation** for slope
stability & erosion reduction

Build over **454 acres of wetland
& open water** to enhance wildlife
habitat

Repurpose 7.5 million tons
of spent ore **Reprocess** 3
million tons of tailings.

Restore fish passage
to historic spawning area

INDUSTRY CAN REPAIR THE ENVIRONMENT

ECONOMY ■ ENVIRONMENT

Invest \$1 billion in Idaho

Provide well-paid jobs to Idahoans

Grow economic opportunity with an estimated \$43 million in direct annual payroll during operations & \$86 million in local and state taxes*

Reprocess historical tailings

Restore fish passage

Repair historically impacted waterways

Remediate areas contributing to water degradation

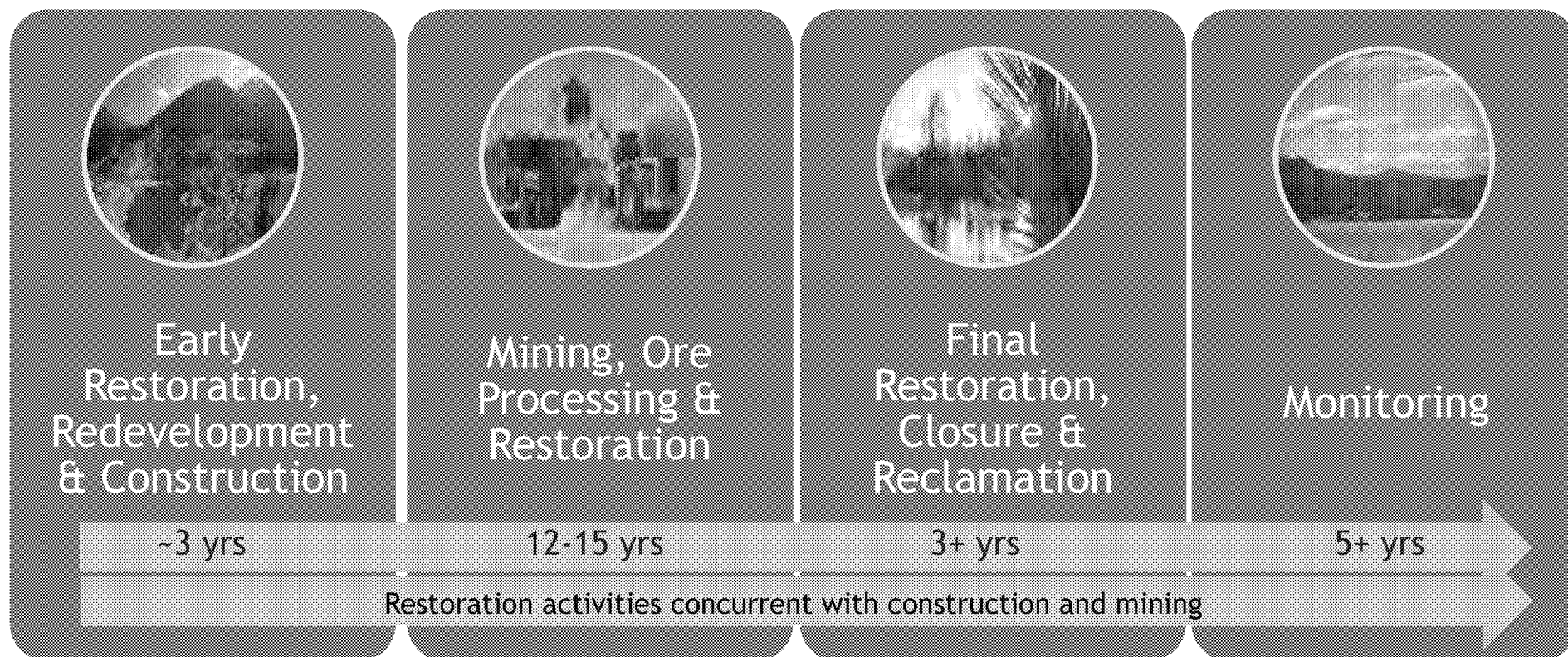
Rehabilitate habitat and natural vegetation

Reuse materials on site

*Based on 2014 Pre Feasibility Study

PROJECT SCHEDULE

13





LISTENING TO THE COMMUNITY

We believe transparency and honesty are critical to the process.

To develop the best possible plan, we listened to stakeholders and the local community.



MINIMIZING IMPACTS

15

Protect water quality

Move people, vehicles, supplies and fuel haulage away from rivers and large fish-bearing streams

Minimize footprint

Limit disturbance by siting facilities and roads on previously disturbed ground

Minimize traffic

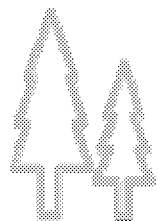
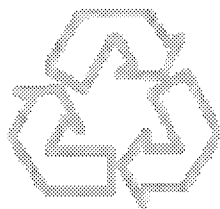
Concentrate traffic during work hours, bus workforce, condense shipments

Reduce greenhouse gas emissions

Re-establish grid power to site, enhance solar power generation

Plant thousands of trees

Reclaim burned areas and legacy disturbance, rebuild habitat and minimize sources of sedimentation





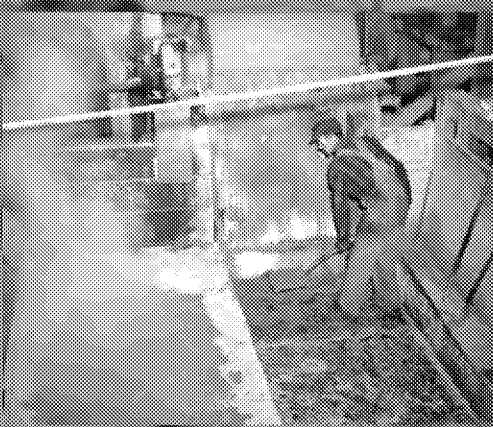
Wanted Immediately
MINERS AND MUCKERS
 for
YELLOW PINE MINE
BRADLEY MINING CO.
STIBNITE, IDAHO
Days' Pay Wages as Follows—

	For 10 Days	For 15 Days	For 20 Days	For 25 Days
MINER	\$1.00	\$1.50	\$2.00	\$2.50
MUCKER	.75	1.10	1.50	1.80

Board, 40.00 Per Week.
 Family men are each furnished dinner as nearly as possible.
 Rooms for the 10-day board are furnished at 10.00 per week in advance.
 Board rate weekly.



HISTORICAL LEGACY



MINING HISTORY

1899

The Thunder Mountain gold rush brings mining to the area

1900-1930

The Town of Stibnite is established

1938

Mining at Yellow Pine pit stops salmon migration upstream

1943-1950

The town of Stibnite booms when antimony is declared a critical mineral

1952-1960

With WWII & the Korean war over, mining slowed and Stibnite slowly faded

1960s

Earthen dam failure resulting in hundreds of tons of sediment eroding into surrounding streams & rivers, even to this day

1970-1990

Periodic mining by multiple owners and operators

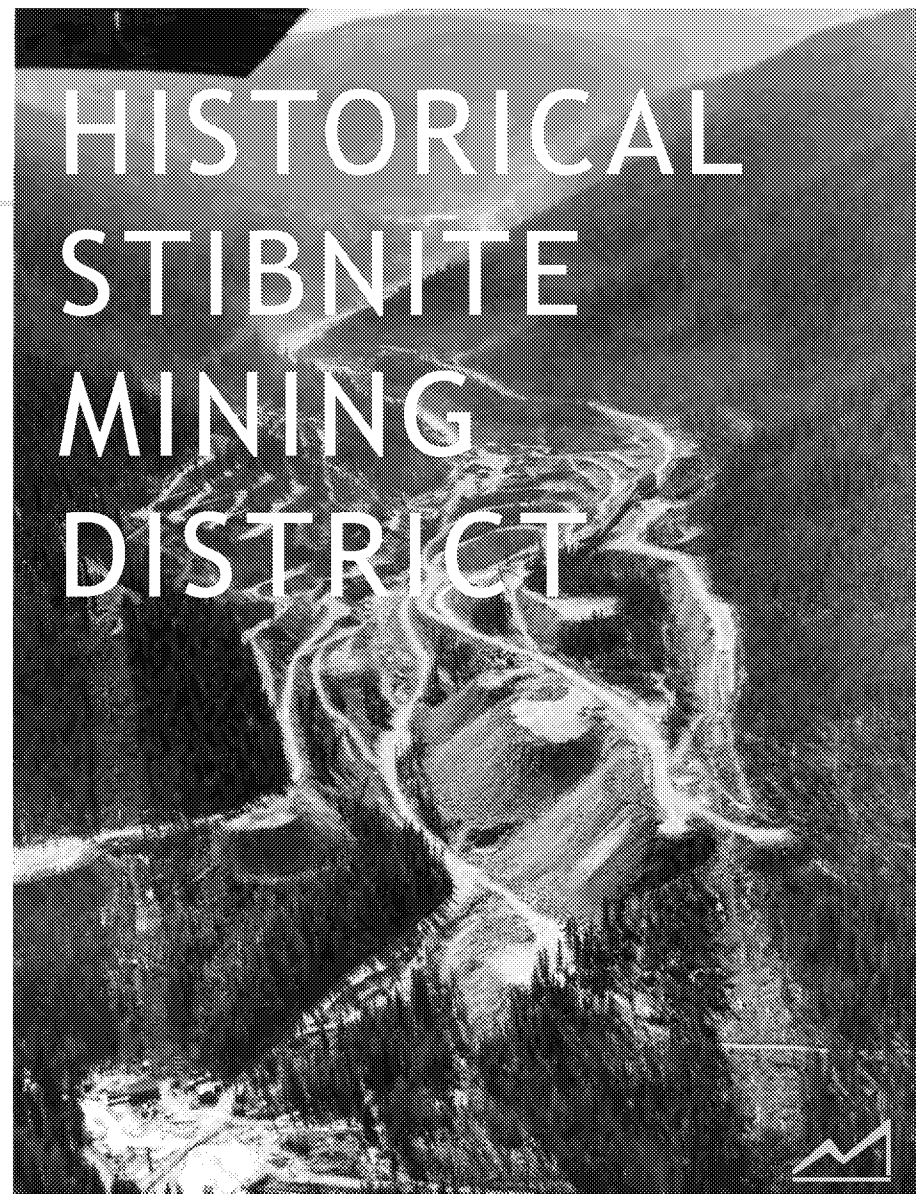
1990s

All mining stopped, U.S. Gov't conducts some limited clean-up

2009

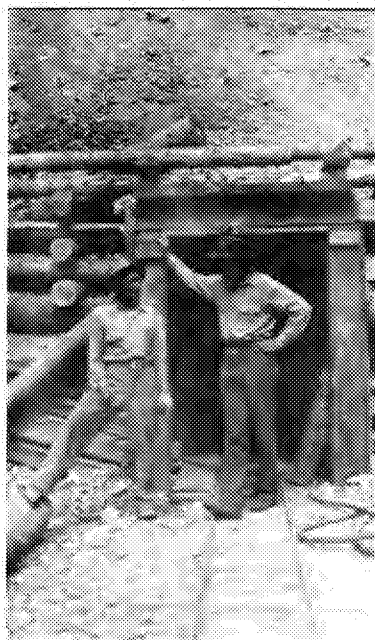
Midas Gold consolidated land ownership & began evaluating the geology & environment within the Stibnite Gold Project area

HISTORICAL STIBNITE MINING DISTRICT



STIBNITE MINING DISTRICT HISTORY

18



Late 1920's
Early Underground
Exploration



1940's & 1950's
WWII & Korean War
Antimony & Tungsten

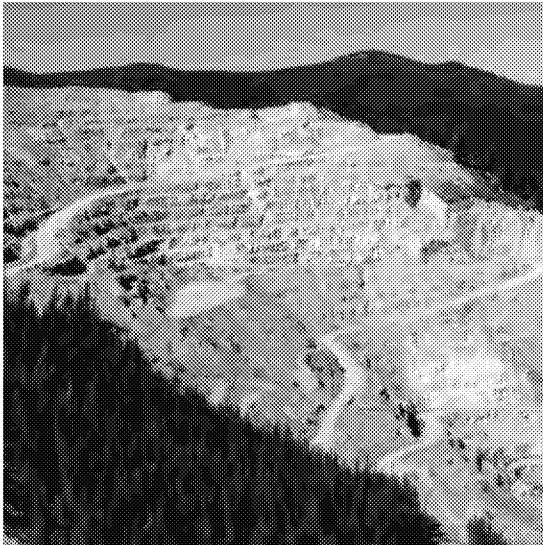


1980's & 1990's
Gold & Silver



WHAT WAS LEFT BEHIND

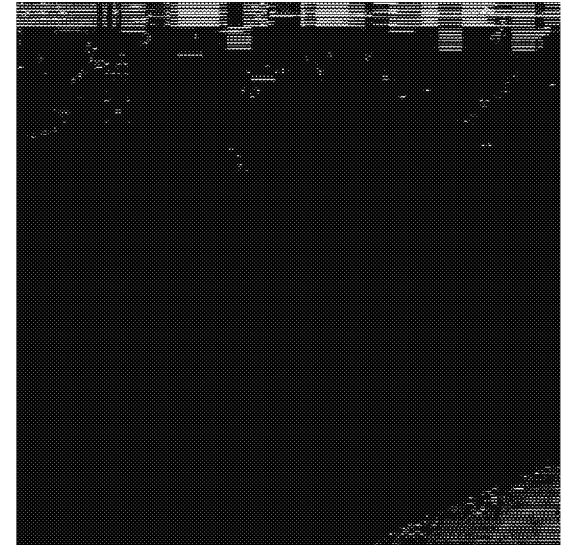
19



Unreclaimed areas



Fish unable to migrate
to spawning grounds



Tailings, waste &
sedimentation
potential sources of
degraded water
quality





CONCURRENT RESTORATION & MITIGATION



Restoration Activity	Amount	Construction	Early Operations	Mid Operations	Late Operations	Closure
Legacy Facilities Cleanup & Water Quality Improvement	>10.5 million tons					
Restore Fish Passage	29,540 linear feet					
Early Fish Passage & Sediment Control Improvement	58+ bridges/culverts					
Stream Channel & Riparian Habitat Restoration	51,350 linear feet					
Wetlands Restoration	454 acres					



RESTORE FISH MIGRATION

FOR THE FIRST TIME SINCE 1938

TODAY, the East Fork of the South Fork of the Salmon River Flows directly into the Yellow Pine Pit, blocking fish migration.

Our plan was designed around how best to connect fish back to spawning grounds. Before mining begins, the fish will be routed back to spawning grounds via a specially designed tunnel.

We will remine the Yellow Pine pit and backfill it to natural gradients so the river may flow and fish may migrate again. In doing so, we will restore fish access to ~6 miles of river and creek habitat.



MIGRATION HOME

Reconnect
anadromous fish to
~6 miles of historic
habitat

Repair ~50,000
feet of stream
channel & riparian
habitat

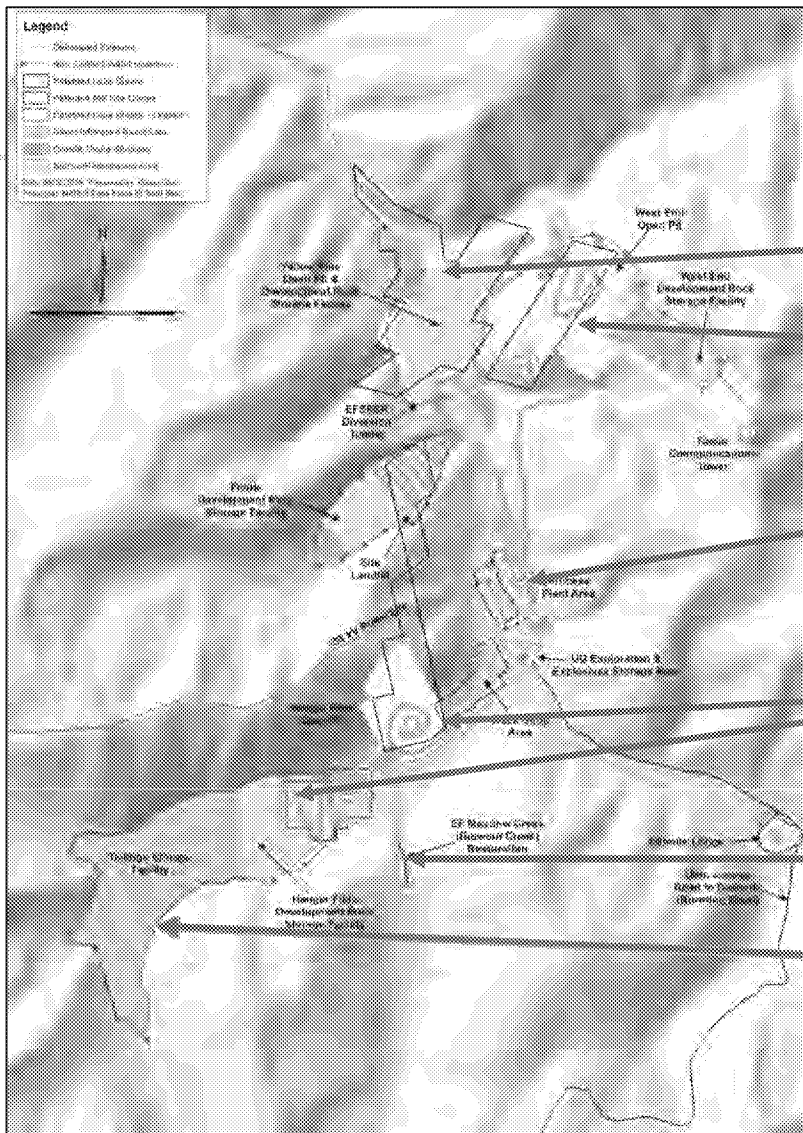
Restore the natural
flow and gradient of
the East Fork of the
South Fork of the
Salmon River

Build ~450 acres of
wetland and open
water

Permanently solve
source of massive
sedimentation and
habitat degradation

Safeguard water quality
through treating potential
sources of water degradation
left behind after a century of
mining

to **RESTORED,
NATURAL
HABITAT**



SITE MAP

YELLOW PINE PIT

WEST END PIT

PROCESSING AREA

HANGAR FLATS AREA

Historical Tailings, Spent Ore and Development Rock

BLOWOUT CREEK

TSF

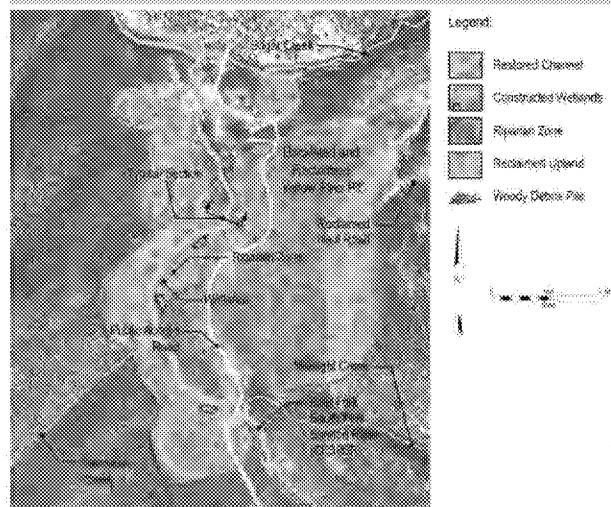
YELLOW PINE PIT RESTORATION

25

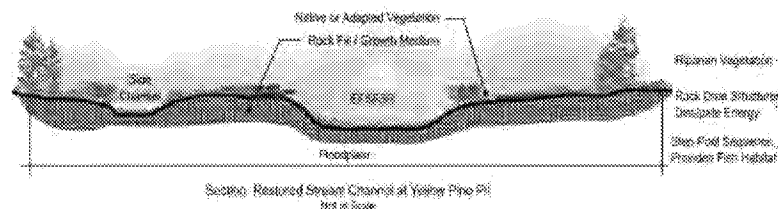
Current



Closure

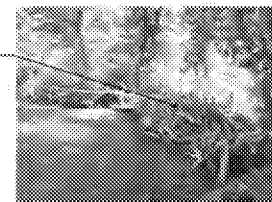


Plan View: Restored Yellow Pine Pit

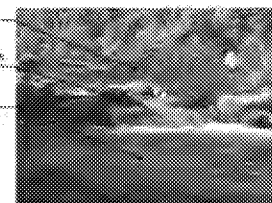
Section: Restored Stream Channel at Yellow Pine Pit
Not to Scale

Corrosional Banding: Restored East Fork South Fork Salmon River Over Yellow Pine Pit Backfill

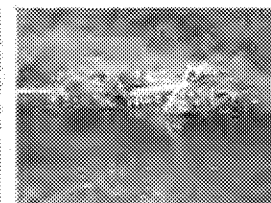
Woody Debris for Aquatic Habitat and Bank Protection



Woody Debris Piles: Adds aquatic habitat and collects sediment on floodplain areas.



Typical Stream Step-Pool Sequence

Typical Habitat Structures
Large wood habitat structures provide pool areas and provide cover for resting fish.

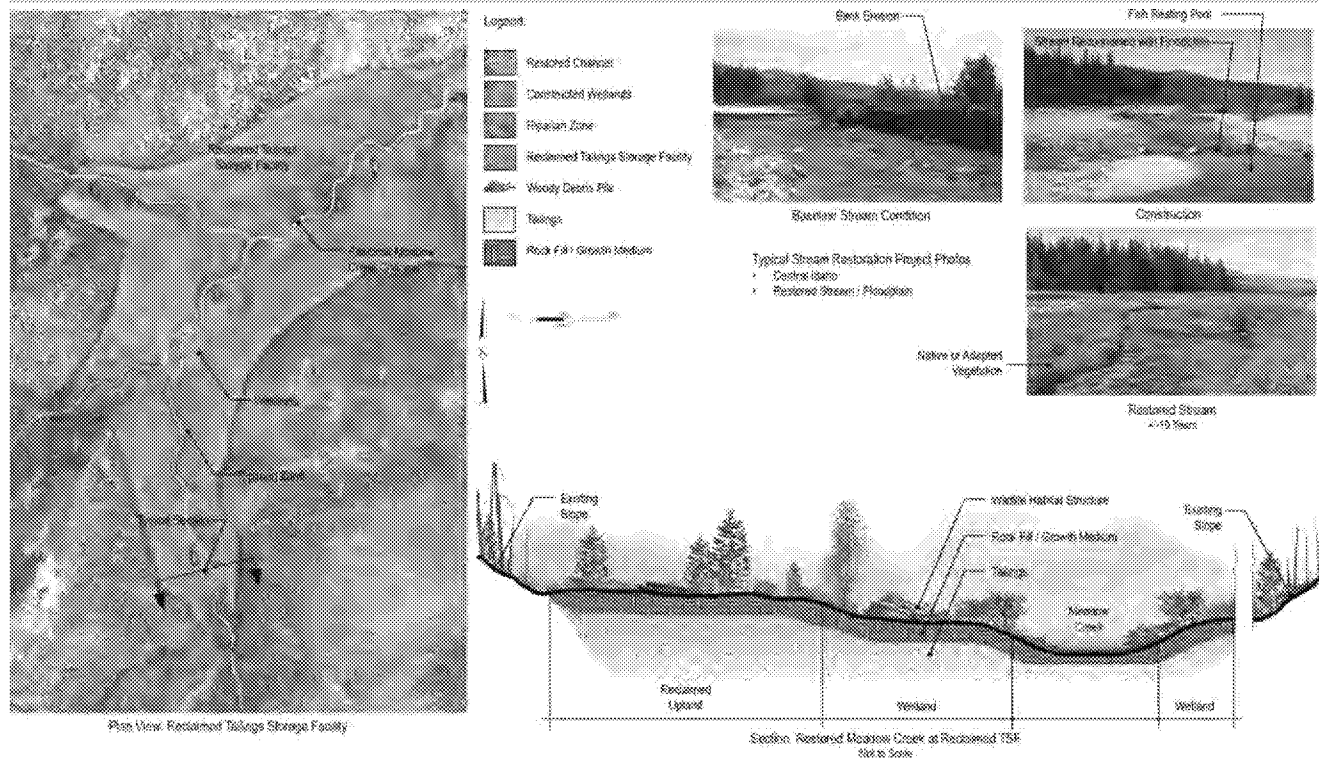
REMOVE & REPROCESS LEGACY TAILINGS

Current



Reprocess 3 million tons of historic tailings, removing an existing potential source of water degradation.

Closure



WEST END RESTORATION

27

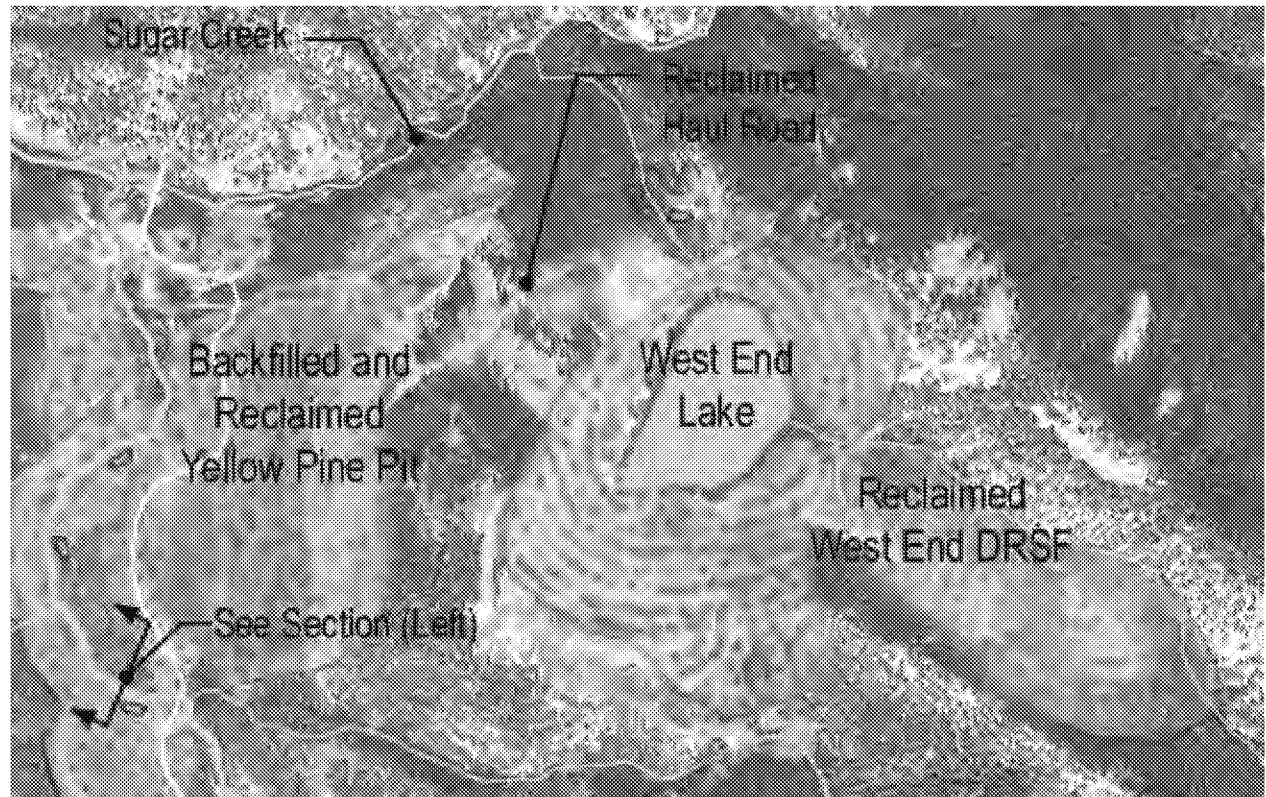
Current



Development rock from West End will be used to backfill the Yellow Pine pit to restore EFSFSR.

West End pit will fill with water to form a high-elevation lake.

Closure

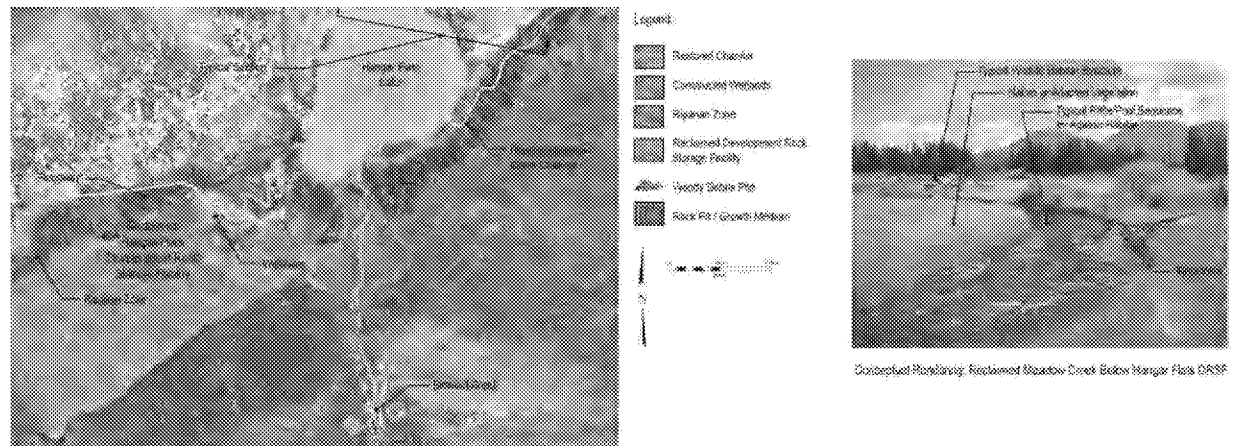


Current

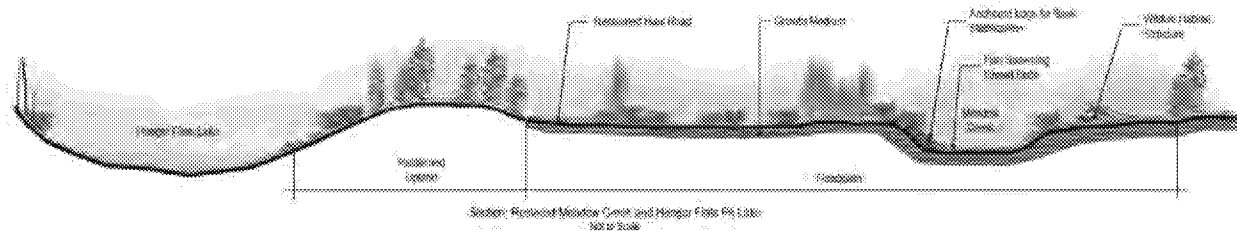


Upon closure, the pit will be **reclaimed** to serve as a sedimentation basin and act as off channel habitat for aquatic species

Closure



Also visit: [Reinforced Hanging Flats \(RHSF\)](#), [Monitors, Drones and Hanging Flats \(MDFL\)](#)



Riparian reclamation around the pit will improve aquatic habitat



REPAIR WATER QUALITY

BLOW OUT CREEK RESTORATION

**1965 Meadow Creek Reservoir failed and caused
a massive ongoing source of sedimentation**

Degrading water quality and aquatic habitat

Impairing the wetlands

Dropping the water table 14 feet

OUR PLAN

Permanently Repair the cut and source
of sedimentation

Rehabilitate wetlands and habitat by
raising the water table in the valley

Restore stream channels and riparian
habitat

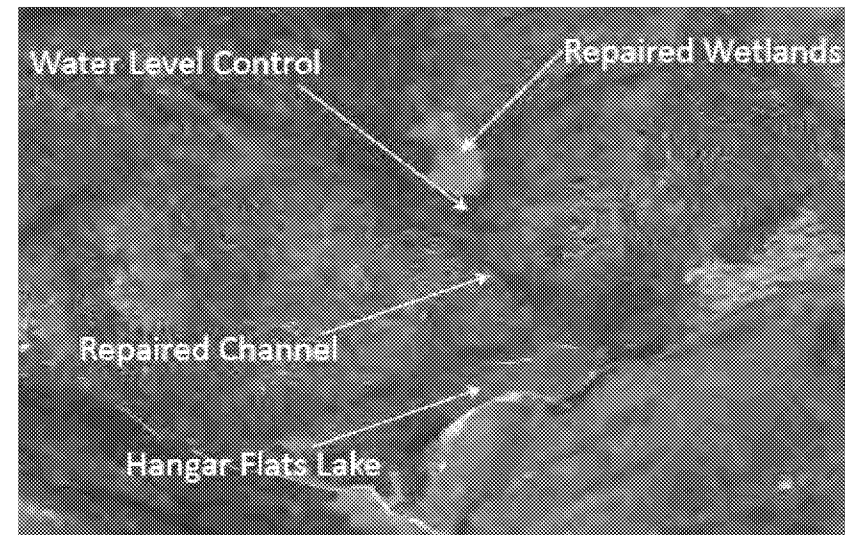
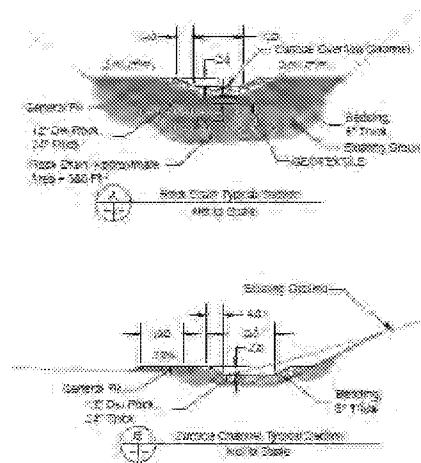
BLOWOUT CREEK RESTORATION

30

Current



Closure



Long term solution to improve water quality, stabilize the water table and re-establish wetland habitat



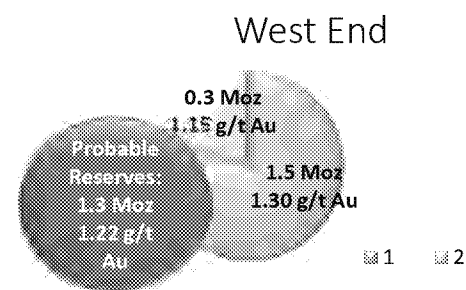
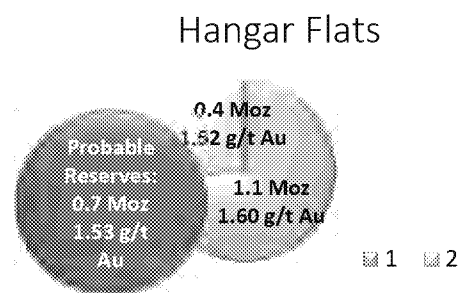
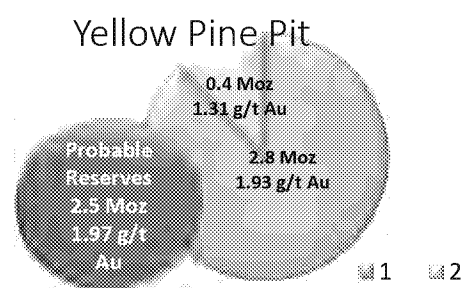


ONE OF THE BEST GRADE GOLD PROJECTS IN THE USA*

1.6_{oz}
gold per ton

High grade gold allows operations
to sustain market fluctuations.

4
Identified Deposits
Yellow Pine Pit
Hangar Flats
West End
Historical Tailings



Based on the Stibnite Gold 2014 Pre-Feasibility Study



produce

4+ million ounces of gold*

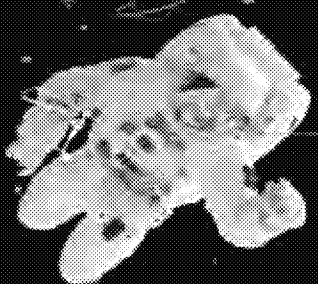
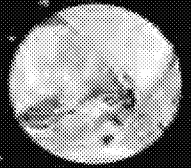
* Based on 2014 Pre Feasibility Study

GO FOR THE GOLD

SHINING EXAMPLES OF A VERSATILE METAL

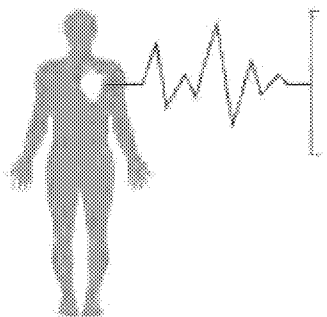
AU


AEROSPACE


A thin layer of gold is applied to spacesuits and many spacecraft components to protect astronauts and their ships.

HEART HEALTH





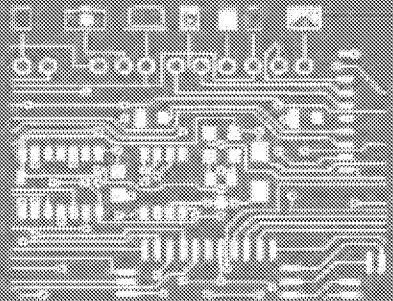
PACEMAKERS




HEART STENTS

Gold is essential to sophisticated medical equipment, including life-support devices, pacemakers and heart stents, and is used in the treatment of heart disease.

TECHNOLOGY





GPS

Metals are essential, irreplaceable components of modern technology. In fact, gold is a key metal in GPS and satellite technology, making it possible for a GPS to help drivers navigate.

produce
~100 million pounds of antimony*

* Based on 2014 Pre Feasibility Study

MIDAS GOLD

ANTIMONY

ANTIMONY IS A RARE, NATURAL ELEMENT OF THE EARTH'S CRUST. THE ELEMENT IS MOSTLY KNOWN TODAY AS AN IN-VENTED BY AN ANTIMONY THERMITE IS USED.

Lead alloyed with antimony is stronger and harder - especially useful in the lead-acid batteries found in cars.

Antimony acts as a disinfecting agent when added to optical glass. This is useful in cameras, binoculars, and iPad screens.

When mixed with antimony, plastics and electronics can be used in applications where they would otherwise MELT OR CATCH FIRE.

- Durable optical lenses, camera lenses, binoculars, and other optical devices
- Optical lenses, camera lenses, binoculars, and other optical devices
- Durable plastics, including car parts, and other plastic products
- Chemicals, and other products
- Durable plastics, including car parts, and other plastic products
- Durable plastics, including car parts, and other plastic products

MINE DEVELOPMENT & PIT SEQUENCING

35

Generally, we will mine in the following sequence:



1. Process legacy tailings & Yellow Pine



2. Hangar Flats



3. West End

General sequencing of mining is based on

- Prioritizing fish passage to spawning grounds
- Restoring river using development rock from West End
- Balancing different grade & ore types
- Maintaining a stable workforce & equipment requirements
- Economics of extraction & processing

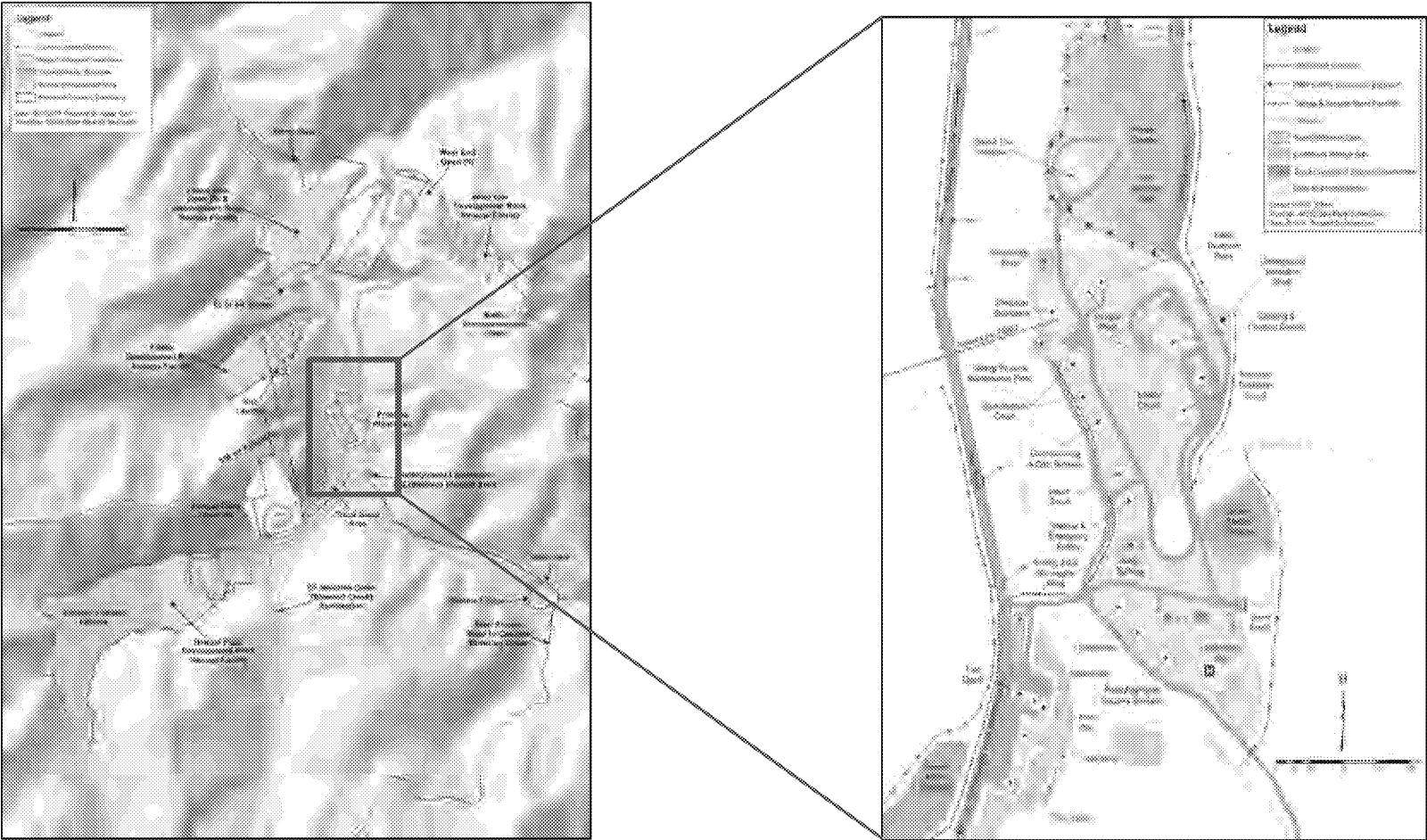
12-15 years of surface mining
20-25,000 tons ore/day





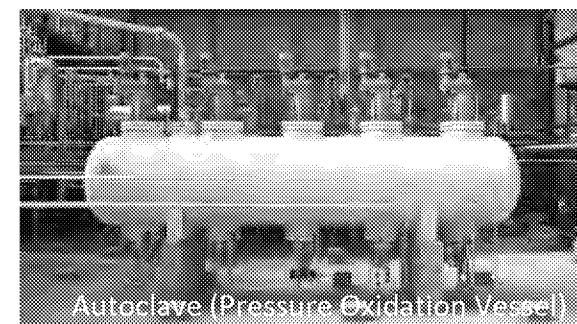
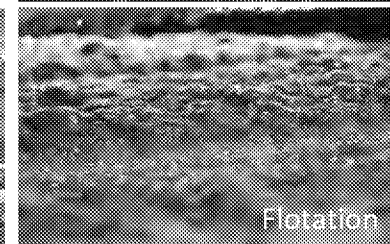
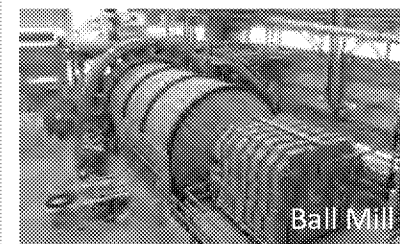
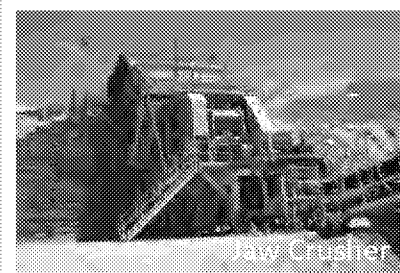
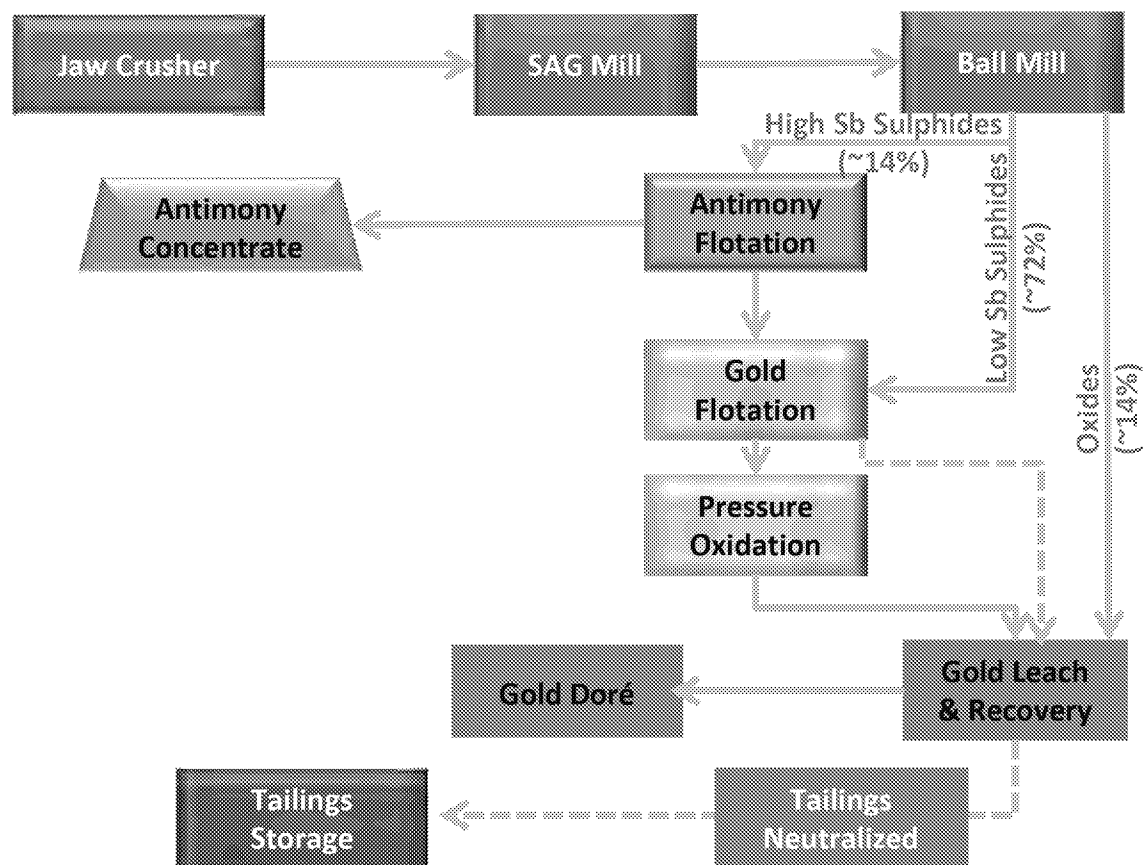
ORE PROCESSING

ORE PROCESSING



ORE PROCESSING

38



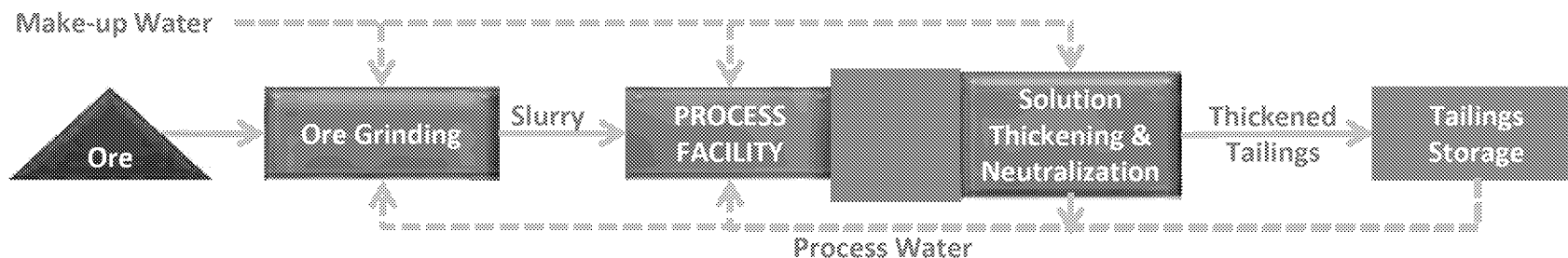
The PFS is intended to be read as a whole, sections should not be read or relied upon out of context. The information in this presentation is subject to the assumptions, exclusions and qualifications contained in the PFS. See "Regulatory Information" at the end of this presentation.

ORE PROCESSING - WATER MANAGEMENT

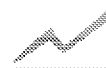
39

Maximize recycling & reuse of water to reduce water consumption

Two-thirds of water requirements are covered by recycled process water⁽¹⁾



(1) Process Water = Water used for ore processing (incl. precipitation falling on TSF)





TAILINGS MANAGEMENT

Legend

- Quaternary
- Pleistocene
- Pliocene
- Pliocene/Pleistocene boundary
- Pliocene/Pleistocene boundary
- Pliocene/Pleistocene boundary

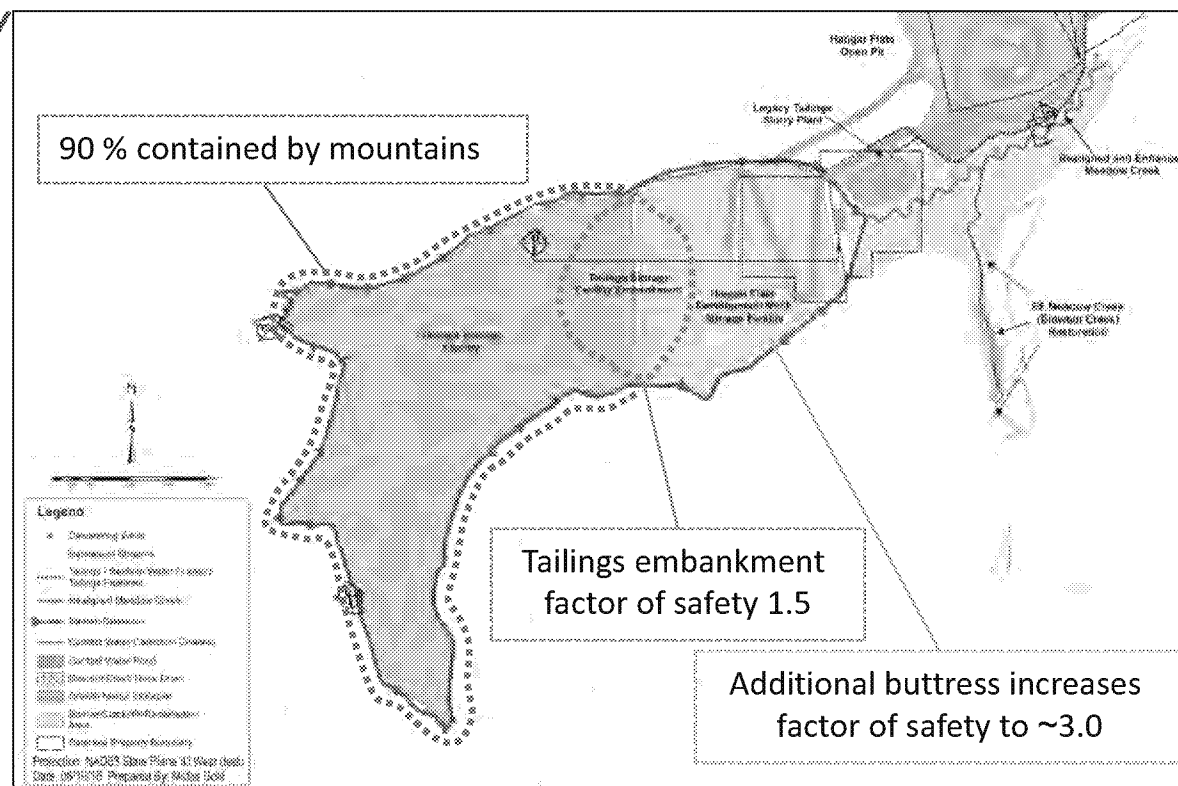
Scale: 0 to 10 km

North Arrow

West End, Clear Lake

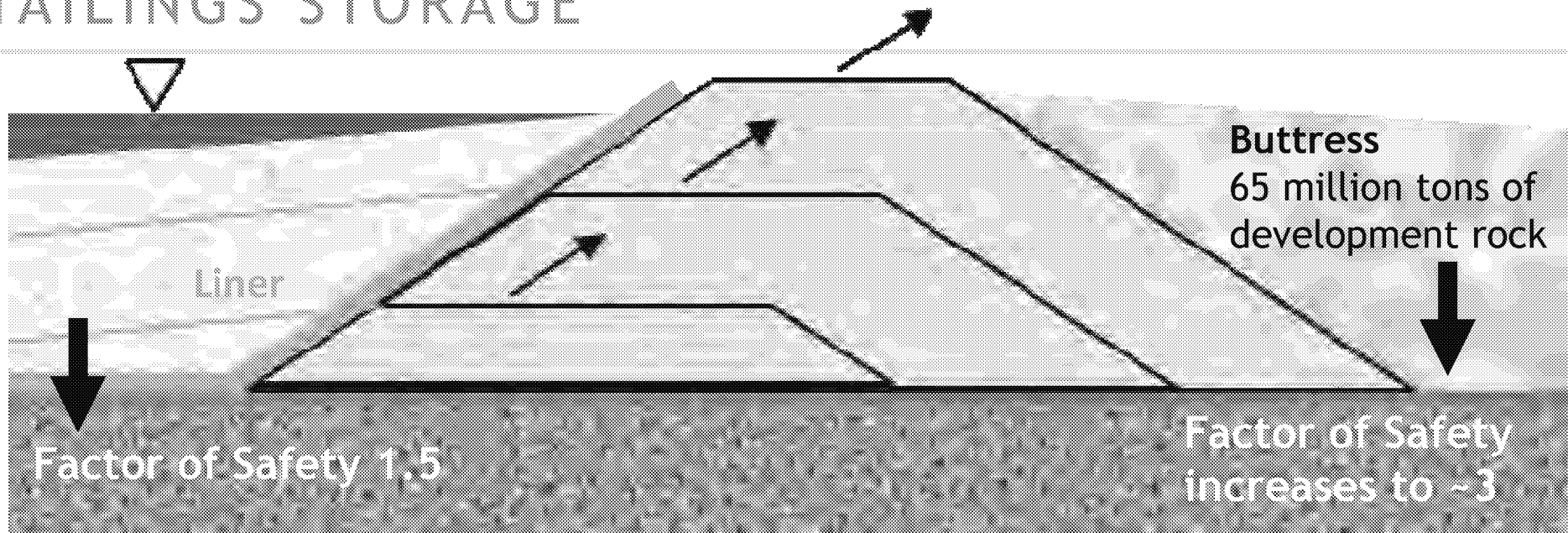
Study site (indicated by a box)

Study site (indicated by a box)



“Keep Clean Water Clean” principle during operations

TAILINGS STORAGE



42

Designed with the highest safety criteria.

- Buttressed by 65 million tons of development rock, which substantially increases the overall factor of safety.
- 90% contained by mountains
- Rockfill embankment material enhances stability vs. soil construction
- High static factor of safety is superior to Idaho's 1.5 requirement
- Downslope method of construction for enhanced stability
- Fully lined to protect water quality
- Area designed to become a wetland & riparian habitat.



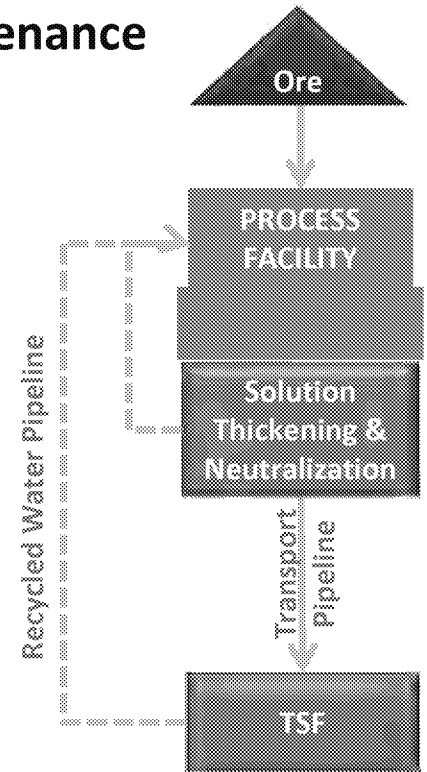
TRANSPORT & RECYCLE WATER PIPELINES

43

Pipelines routed adjacent to haul roads to enable monitoring and maintenance

Additional safety measures for pipeline carrying tailings:

- Carbon steel pipe (or equivalent) lined with high-density polyethylene (HDPE)
- Secondary pipeline containment through geosynthetic-lined trench
- Emergency containment catchment basins along alignment at low points
- Double-contained pipe and sleeves when routed across streams



Highest level of security measures for containment in the unlikely case of a spill or leak



Steel pipe + Lined trench

TSF OPERATION

44

Operating with the ultimate closure in mind:

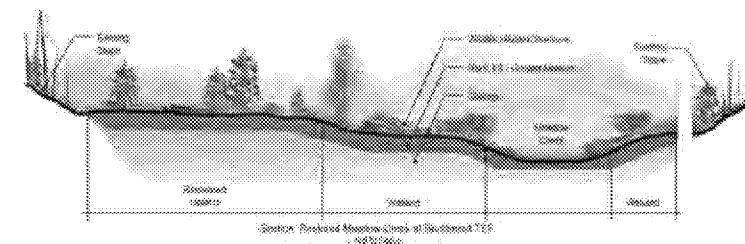
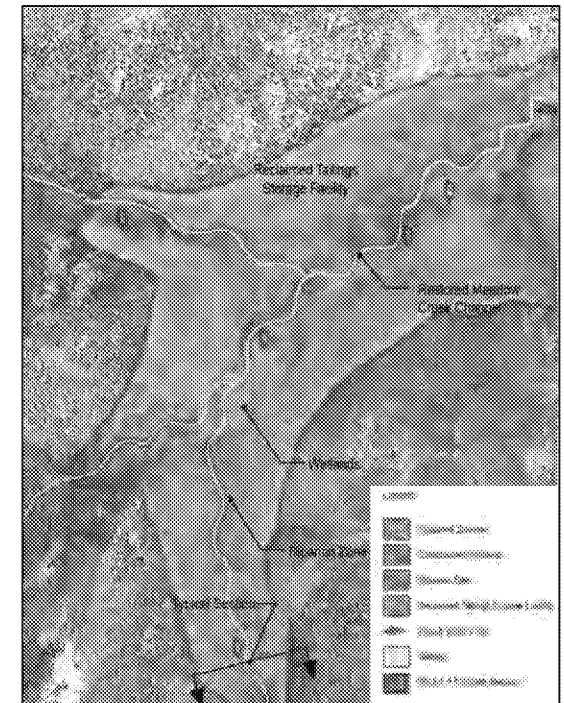
- Reclamation and rehabilitation as wildlife and fish habitat including meandering stream within wetland and riparian habitat

Early and faster reclamation:

- Minimizing closure water management requirements by speeding consolidation of thickened tailings
- Enhanced in-stream water quality through operating TSF as zero discharge facility
- Creation of TSF surface that allows natural drainage at closure

Wildlife protection during operations:

- TSF surrounded by wildlife exclusion fencing
- Neutralization of tailings to levels protective of wildlife





MONITORING

We will actively monitor environmental conditions throughout Project life until ~5 years past final reclamation, making information publicly available

Temperature, solar radiation, relative humidity, precipitation, barometric pressure, wind speed & direction

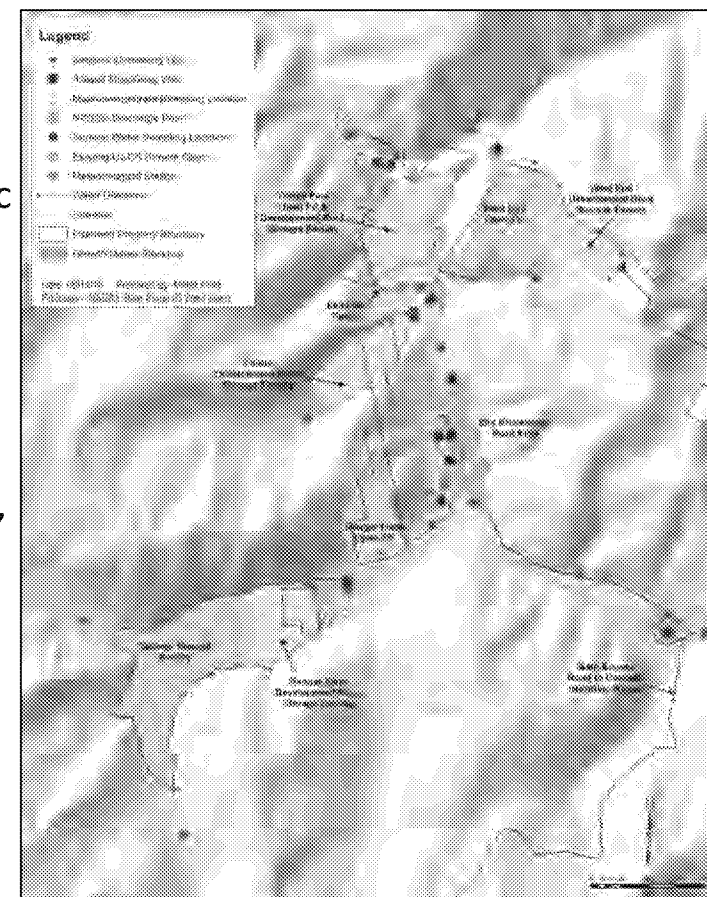
Metals & minerals, TDS, TSS, hardness, color, dissolved oxygen, pH, specific conductivity, temperature, turbidity


..... Metals & metalloids, inorganics, TDS, dissolved oxygen, pH, conductivity, temperature, turbidity

www Habitat conditions, fish surveys, macroinvertebrates

Presence, sightings and mortalities of birds, mammals, reptiles, amphibians

- Including vegetation, etc.





RESTORATION, RECLAMATION & CLOSURE

RECLAMATION COMMITMENT

48

Remediation & reclamation begin before mining
& continue throughout the life of mine.



RECLAMATION AND CLOSURE OBJECTIVES

49

RESTORATION activities concurrent with all mining phases

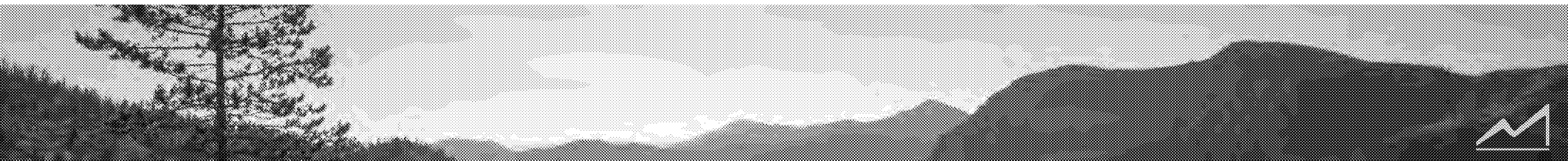
MINIMIZE DISTURBANCE levels by siting facilities within existing disturbance to the extent practicable, and implementing concurrent and timely reclamation

PROTECT THE PUBLIC & WILDLIFE through proper site closure, exclusion fencing and reclamation

RECLAIM DISTURBED AREAS for recreation and wildlife habitat

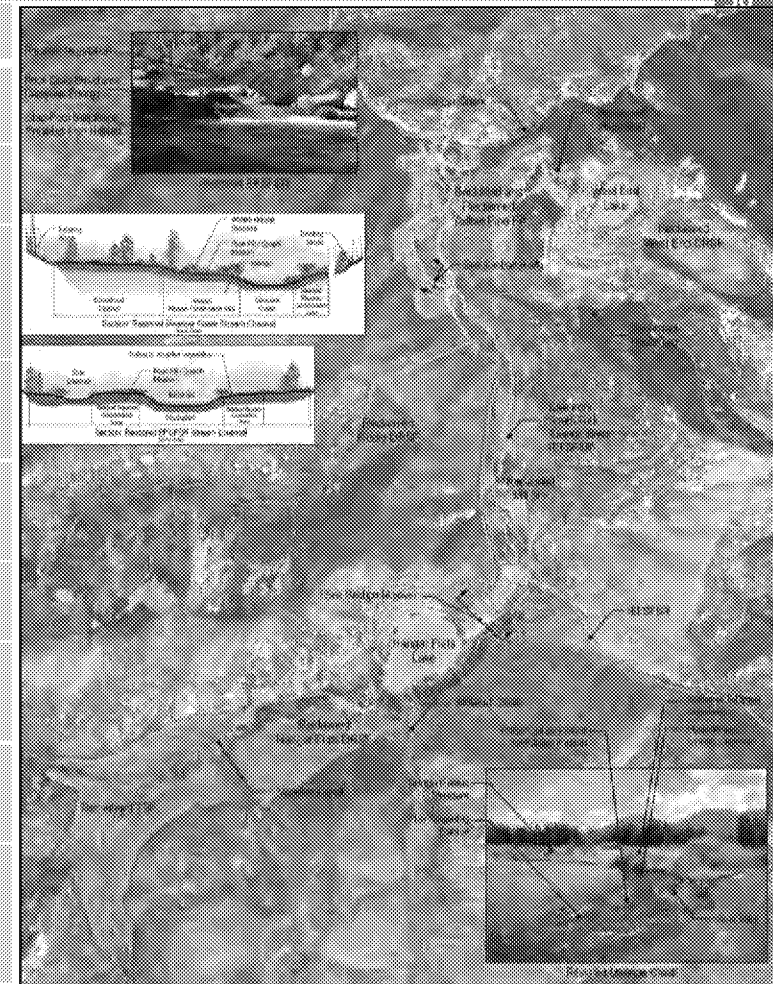
PREVENT the establishment and spread of noxious weeds

CONSISTENCY with applicable National Forest Land Resource Management Plan (LRMP) provisions, along with Idaho Department of Lands (IDL) regulations and standards



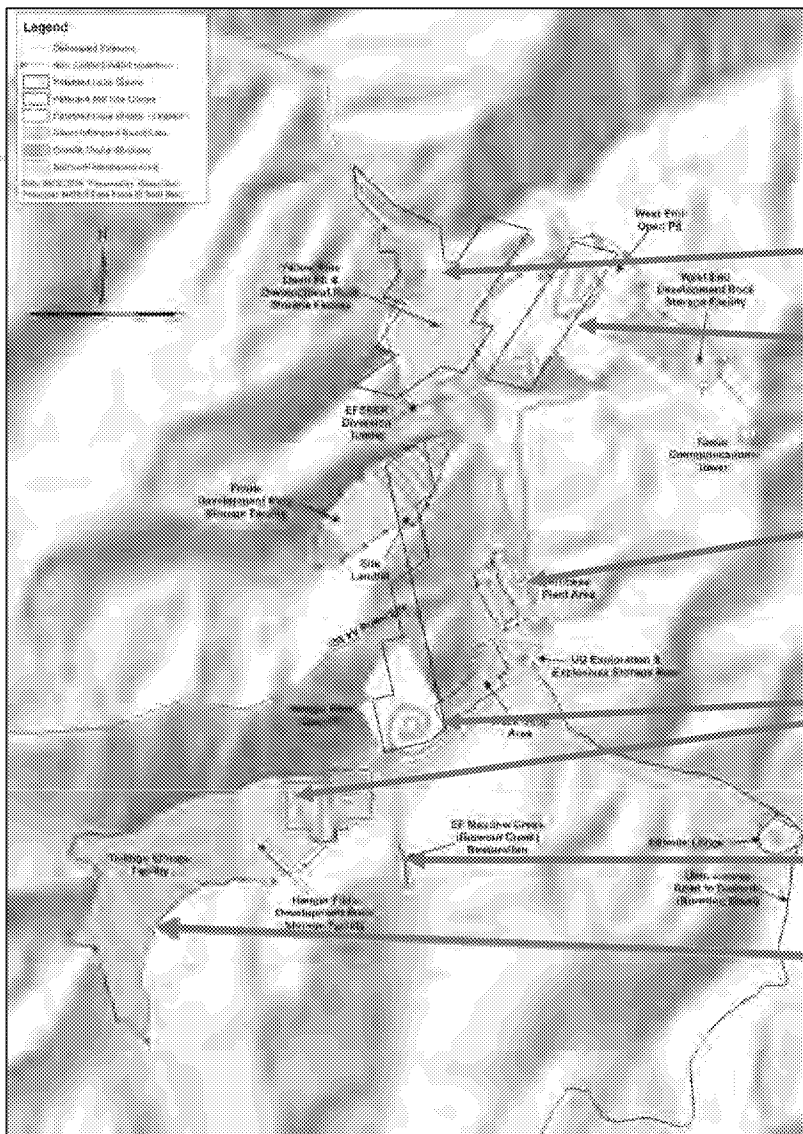
SPECIFIC RESTORATION & CLOSURE

Site	Restoration & Closure
Surface exploration	Disturbance will be limited, where possible, & reclaimed
Tailings storage facility	Conversion to a self-sustaining natural habitat
Development rock storage facility	Restored to a natural topography, seeded & planted to promote stabilization & habitat including re-establishments of channels
Hangar Flats pit	Restored to serve as sedimentation basin to reduce sediment load & improve aquatic habitat
Yellow Pine pit	Restored to original EFSFSR river gradient to allow for fish passage upstream for the first time since 1938
West End pit	Restored to form West End Lake
Onsite employee housing	Dismantled & salvaged or demolished
Roads	Closed & reclaimed while historic routes (e.g. Burntlog Road) will be restored to similar conditions as at pre-production
Electric transmission lines	Disassembled & reclaimed from Johnson Creek to site (upgraded line from Warm Lake to Yellow Pine will remain to service existing users)





NPDES PERMIT OVERVIEW & TIMELINE



SITE MAP

YELLOW PINE PIT

WEST END PIT

PROCESSING AREA

HANGAR FLATS AREA

Historical Tailings, Spent Ore and Development Rock

BLOWOUT CREEK

TSF



EFSF Salmon River

53



NPDES Discussion Outline

54

1. NPDES Approvals Needed
 1. Construction General Permit – Construction phase
 2. Multi-Sector General Permit – Non-contact water
 3. Industrial Wastewater Permit – Contact and process water; domestic wastewater (lodging area and mill site)
2. Water-related Information
 1. Water quantity – discharge regime for each outfall
 2. Existing water quality – ambient and legacy conditions
 3. Disposal/treatment needs – will differ among outfalls
 4. Effluent water quality – address all parameters of concern relative to water quality standards
3. Issues to Consider
 1. Level of detail
 2. Timing issues
 3. IDEQ's role
 4. WQBEL analysis
 5. EFSFSR tunnel
 6. ESA considerations – salmonids
4. Permitting timeframe

NATIONAL ENVIRONMENTAL POLICY ACT

55

Point of Compliance Transportation Impact Study

Stream Channel Alteration Mine Tailings Impoundment

Forest Plan Amendments **401: Water Quality Certification**

NPDES: Water Discharges Native American Consultation

Cultural Clearance **NEPA** Air Quality Cyanide Permit

Power Line ROW **Idaho Roadless Rule**

Idaho Department of Lands Reclamation Approval

Road Use Permit Mineral Material Permit (Borrow Sources)

Endangered Species Consultation **ROD** Water Rights

404: Clean Water Act

Detailed Mitigation Plans



NPDES Approvals Needed

56

- **Construction General Permit**

- Address facility preparation activities prior to mining and ore processing

- **NPDES Multi-Sector General Permit**

- Address non-contact stormwater from regulated portions of the site outside of active mining, processing and storage areas for development rock and tailings

- **NPDES Individual Industrial Wastewater Permit**

- Address contact water from mining, processing and storage areas for development rock and tailings

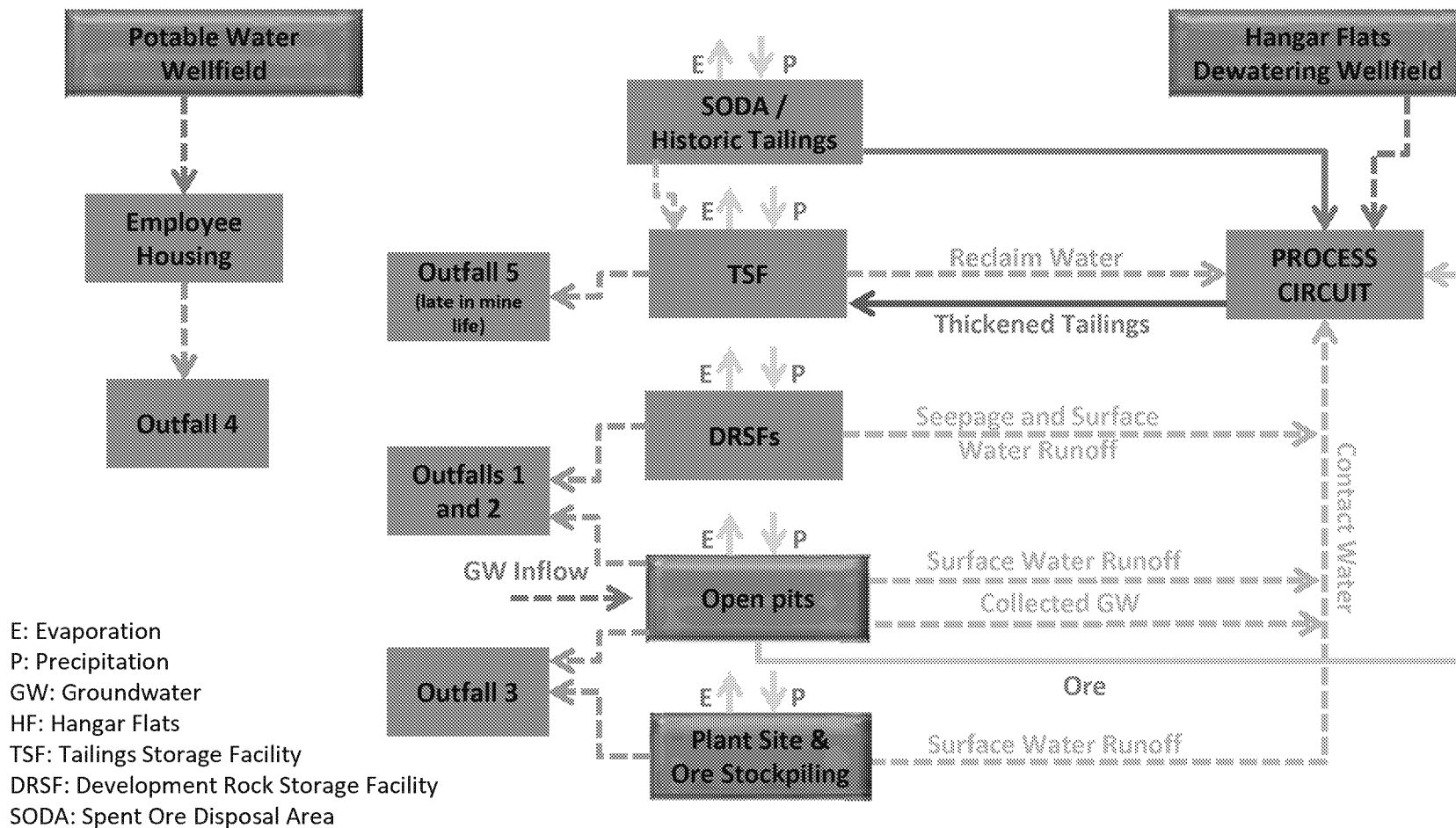
- Address process water (primarily at end of mine life during dewatering of tailings storage facility)

- **Midas is utilizing the valuable guidance provided in the Region 10 EPA Source Book for mining**



WATER MANAGEMENT

57

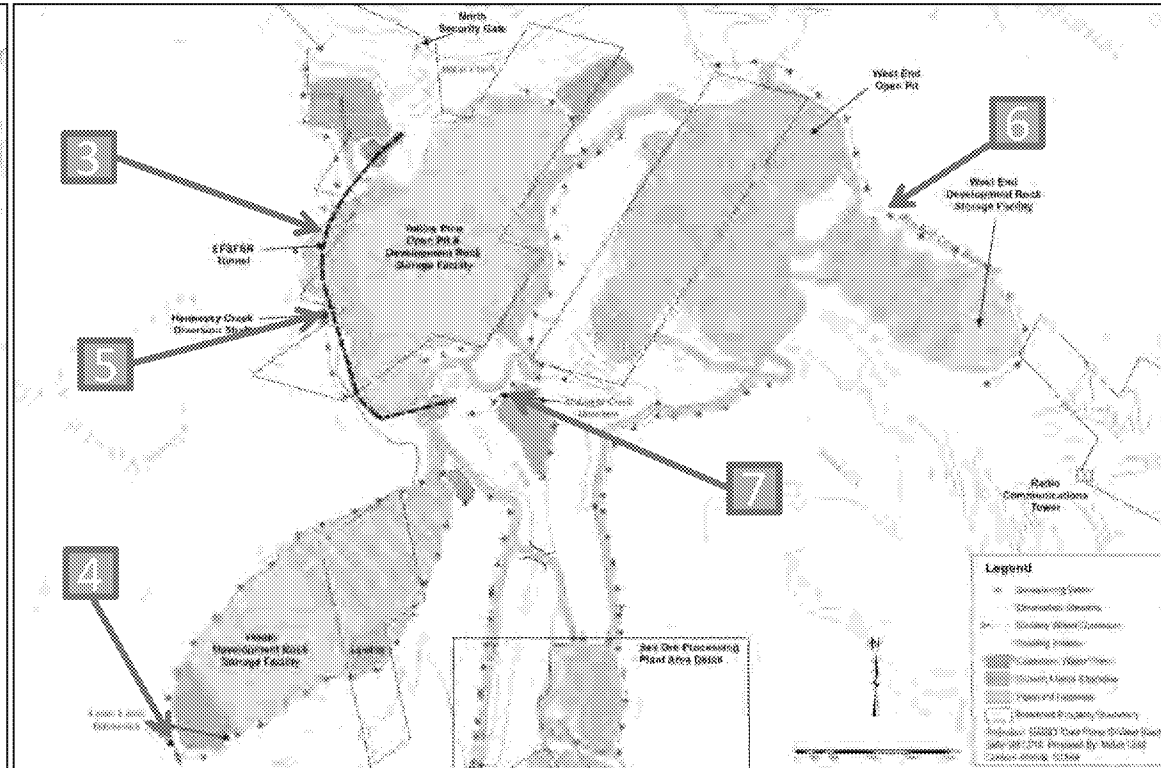


SURFACE WATER MANAGEMENT

58

- Primary objective of water management infrastructure:
 - **Preventing** mining facilities from contact with streams and stormwater
 - **Minimizing** erosion and sediment generation
 - **Promoting** fish passage
 - **Rehabilitating** existing areas of previous disturbance
- Increased materials/construction efficiency by Coordinating expansion of TSF, DRSFs & open pit mines with water management infrastructure
- Implementation of water collection & sediment control measures during all mining phases *(to meet or exceed any applicable NPDES/IDEQ permit standards)*



[illegible]

1. Meadow Creek
2. Blowout Creek
3. EFSFSR
4. Fiddle Creek
5. Hennessy Creek
6. West End Creek
7. Midnight Creek

Anticipated Outfalls

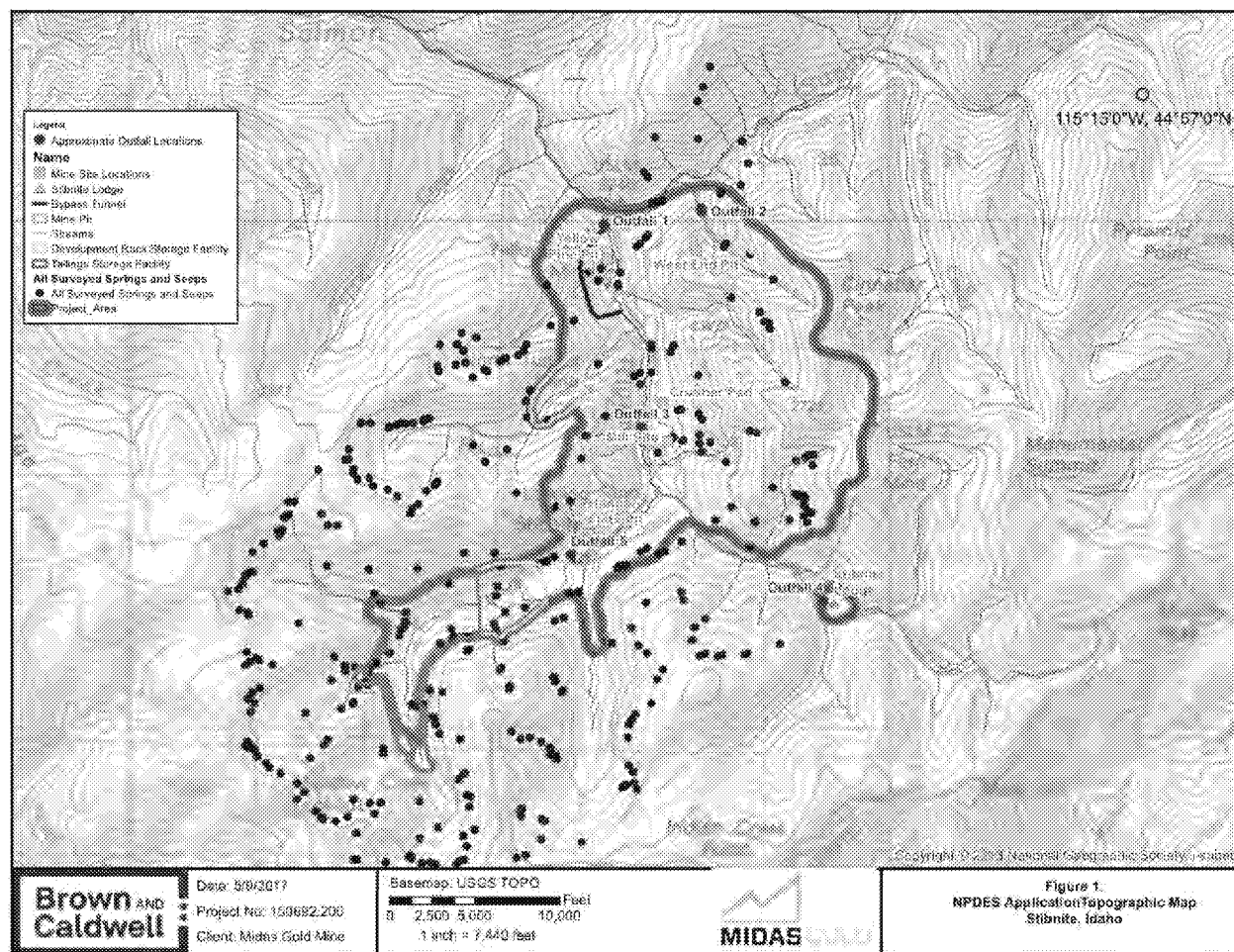
60

- Outfall 1 – Yellow Pine Pit Area
 - Runoff and drainage from pit, DRSF and associated work areas
 - Contact water from mine excavation activities
 - Seepage water from pit wall
- Outfall 2 – West End Area
 - Runoff and drainage from pit, DRSF and associated work areas
 - Contact water from mine excavation activities
 - Seepage water from pit wall
- Outfall 3 – Mill Area
 - Runoff and drainage from Mill site and Hangar Flats
 - Contact water from ore stockpiles
 - Domestic wastewater from staff facilities at Mill site (options under evaluation)
- Outfall 4 – Stibnite Lodge Area
 - Domestic wastewater from staff lodging and recreational facilities
- Outfall 5 – Tailings Storage Facility
 - Dewatering of TSF at mine closure (treated process water)



Anticipated Outfalls

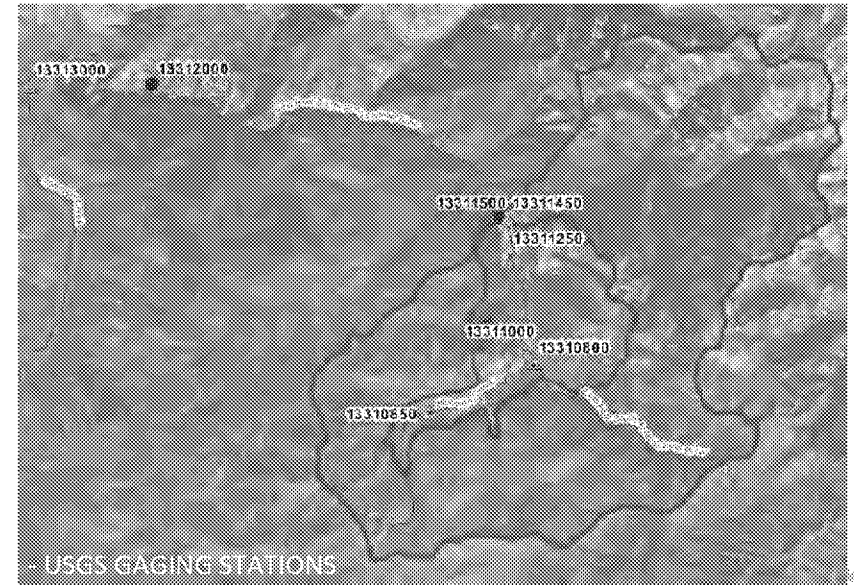
61

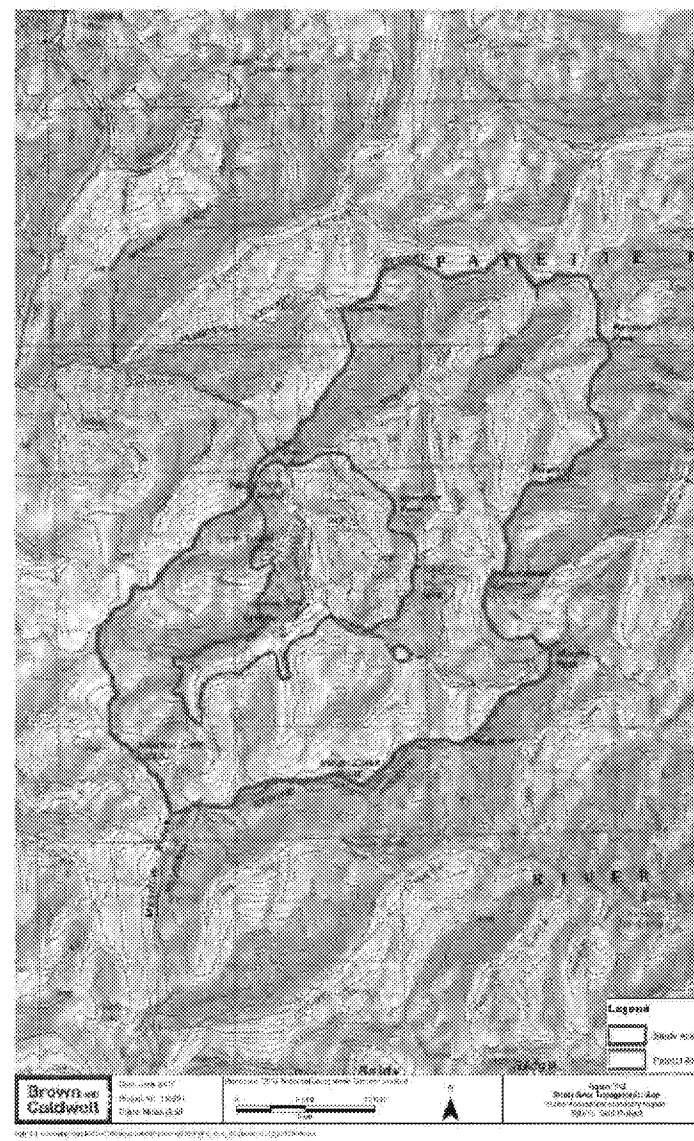


Water Quantity

62

- Runoff Volume Assessment completed for storm events ranging from 1-year to 100-year.
 - Very conservative projections
 - Independently addresses each mine pit and DRSF
 - Independently addresses snowmelt and summer rain event conditions
 - Design runoff flows range from <1 to 555 cfs, with highest runoff predicted for 25-year storm at 450 cfs.
 - Currently does not address:
 - timing of runoff (storm hydrograph) or antecedent conditions.
 - storage within pits or transfer of water among areas, thus predicted runoff volumes are not necessarily representative of expected effluent volumes.
 - Midas is evaluating most appropriate approach/tools to address these issues



[illegible]

Water Quantity

64

- Water Balance developed for the proposed mining and reclamation program
 - Spreadsheet-based
 - Highly detailed for mine planning purposes
 - Month-by-month depiction of water quantities associated with process flow diagram
 - Currently does not:
 - address NPDES outfalls independently (does not provide specific discharge estimates)
 - provide for sub-monthly timeframe considerations
 - include water quality considerations
 - Midas is evaluating the most appropriate approach/tools to address these issues
- Mine pit and mill outfalls are expected to discharge only intermittently in response to precipitation through much of the mine life.
- Process water system is expected to be zero-discharge until mine closure



- ◆ Extensive baseline sampling by Midas at the site
 - 32 perennial stream stations
 - Monthly sampling April 2012 to July 2014
 - Quarterly sampling August 2014 to present
 - 23 seep and spring stations
 - Quarterly sampling April 2012 to present
 - 6 field parameters measured
 - 41 laboratory parameters measured in all samples
 - 27 additional constituents measured in all quarterly samples
 - Sampling program conducted under a QAPP reviewed by EPA, IDEQ and USFS



Existing Water Quality

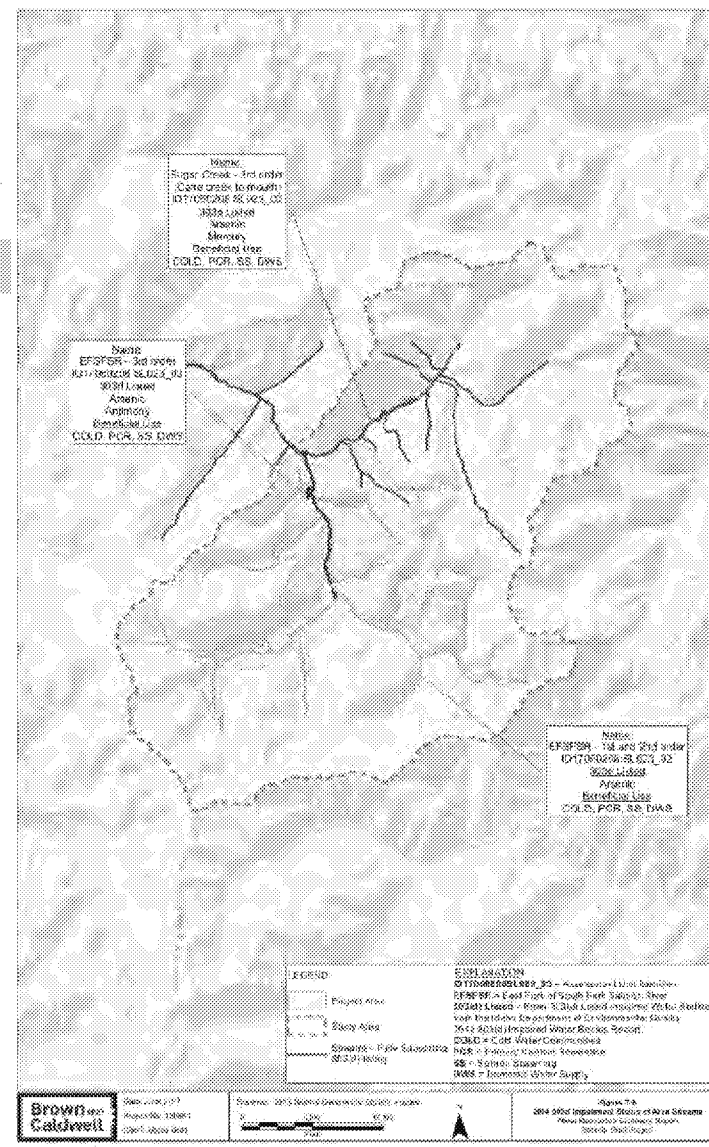
Parameters Included in Baseline Surface Water Study

Laboratory Analytes

Alkalinity	Chromium III	Nickel
Aluminum	Chromium VI	Nitrates
Ammonia	Cobalt	Nitrites
Antimony	Copper	N, total
Arsenic	Cyanide, free	Phosphorus (P)
Arsenic III	Cyanide, total	Potassium
Barium	Cyanide, WAD	Selenium
Beryllium	Hardness	Silver
Bicarbonate	Iron	Sodium
Boron	Fluoride	TDS
Cadmium	Lead	TSS
Calcium	Magnesium	Sulfate
Carbonate	Manganese	Thallium
Chloride	Mercury	Vanadium
Chromium, total	Methyl mercury	Zinc
	Molybdenum	

Field Measurements

Color
Dissolved Oxygen
pH
Conductivity
Temperature
Turbidity



Potential Treatment

67

- Outfalls 1, 2 and 3
 - Anticipated contact water quality could be handled by an **iron co-precipitation process**, perhaps with **additional polishing**
- Outfall 4
 - Domestic wastewater treatment
 - **Biological membrane reactor** is a potential treatment technology
- Outfall 5
 - Dewatering Tailings Storage Facility for closure
 - Expected to be similar to Outfalls 1, 2 and 3
 - Concentrations of some constituents may be higher
 - Data collection during operation period will allow for design of suitable treatment process
- Midas already has a permit for a treatment system to generate reuse-quality water
 - Facility is located at Mill Site; has not yet been used



Effluent Water Quality

68

- Parameters of primary concern (i.e., potentially requiring treatment)

- Mining-Related

- Antimony
- Arsenic
- Conductivity
- Mercury
- Nitrogen and carbon by-products of cyanidation (not an issue until closure)

- Domestic wastewater

- BOD
- Conductivity
- Dissolved oxygen
- Fecal coliforms
- Nitrogen
- Phosphorus



Issues to Consider

- Level of detail and approach to hydrology, treatment and quality analyses
- Ambient/Legacy Water Quality Issues
 - Many are outside the area that would be subject to the Individual NPDES permit
- WQBEL Analysis
- Rapid Infiltration Basins
 - Possible means of disposing of excess raw groundwater from Hangar Flats dewatering
- Timing of Inclusion of Specific Outfalls in NPDES Permit
 - Outfall 5 – Tailings Storage Facility – zero discharge expected until closure
- Anti-degradation Policy Considerations
- Need for Mixing Zones, Variances or other relief mechanisms
- EFSFSR Diversion During Operations
 - Tunnel



EFSFSR WATER DIVERSION DURING OPERATIONS

70

- To restore fish passage during mining and to allow re-mining and reclamation of Yellow Pine Pit, Midas proposes to construct a tunnel around the west side of the pit
- Approximate 15'x15' passage with baffles and pool areas for fish to rest
- EFSFSR channel to be restored during reclamation
- Flow reestablished in to restored channel and tunnel sealed



ESA Considerations

71

- Listed Species known from the area:

- **Aquatic**

- **Snake River spring/summer Chinook Salmon** (Threatened) – known from the site
 - **Snake River Basin Steelhead** (Threatened) – known from the site

- **Terrestrial**

- **Canada Lynx** (Threatened) – not observed on-site and little on-site habitat
 - **North American Wolverine** (proposed Threatened) – observed on-site in 2015

- Critical Habitat

- Several streams associated with the site designated as Critical Habitat for

- **Snake River spring/summer Chinook Salmon**
 - **Snake River Basin Steelhead**
 - **Bull Trout**

- Former mining operations created physical barriers to upstream spawning migration



Anticipated NEPA Timeline

72

- Notice of Intent for EIS Preparation: Q2 2017
- Scoping Period: Q3 2017
- Draft EIS: Q3 2018
- Public Comment Period: Q3 2018
- Final EIS/Draft ROD: Q4 2018
- Record of Decision Preparation: Q2 2019

Target NPDES Permitting Timeline

For Individual Industrial Wastewater Permit

- NPDES Industrial Wastewater Application to EPA & DEQ: Q3 2017
- Completeness Review Completed and Issuance of Request for Additional Information: Q4 2017
- Midas Response to Request for Additional Information: Q1 2018
- Draft permit and Factsheet Issued; Public Comment Period: Q3 2018
- Midas Response to Request for Additional Information from Public Comment: Q3 2018
- Notice of Issuance of Permit: Q4 2018

CGP and MSGP Notice of Intent packages would also be submitted for review early in the above timeline

DISCUSSION



RESTORE THE SITE

FOR MORE INFORMATION:

WWW.MIDASGOLDIDAHO.COM

 facebook.com/midasgoldidaho

 [@MidasIdaho](https://twitter.com/MidasIdaho)



COMPLIANCE WITH NI43-101

76

The technical information in this presentation (the “Technical Information”) has been approved by Stephen P. Quin, P. Geo., President & CEO of Midas Gold Corp. (together with its subsidiaries, “Midas Gold”) and a Qualified Person. Midas Gold’s exploration activities at Stibnite Gold were carried out under the supervision of Christopher Dail, C.P.G., Qualified Person and Exploration Manager and Richard Moses, C.P.G., Qualified Person and Site Operations Manager. **For readers to fully understand the information in this presentation, they should read the Pre-Feasibility Study Report (available on SEDAR or at www.midasgoldcorp.com) in its entirety (the “Technical Report”), including all qualifications, assumptions and exclusions that relate to the information set out in this presentation that qualifies the Technical Information. The Technical Report is intended to be read as a whole, and sections or summaries should not be read or relied upon out of context. The technical information in the Technical Report is subject to the assumptions and qualifications contained therein.**

Mineral resources that are not mineral reserves do not have demonstrated economic viability. Mineral resource estimates do not account for mineability, selectivity, mining loss and dilution. These mineral resource estimates include inferred mineral resources that are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorized as mineral reserves. There is also no certainty that these Inferred mineral resources will be converted to the Measured and Indicated categories through further drilling, or into mineral reserves, once economic considerations are applied.

Section 2.3 of NI 43-101 states that: Despite paragraph (1) (a), an issuer may disclose in writing the potential quantity and grade, expressed as ranges, of a target for further exploration if the disclosure

- (a) states with equal prominence that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to define a mineral resource and that it is uncertain if further exploration will result in the target being delineated as a mineral resource; and
- (b) states the basis on which the disclosed potential quantity and grade has been determined.

The mineral resources and mineral reserves at the Stibnite Gold Project are contained within areas that have seen historic disturbance resulting from prior mining activities. In order for Midas Gold to advance its interests at Stibnite, the Project will be subject to a number of federal, State and local laws and regulations and will require permits to conduct its activities. However, Midas Gold is not aware of any environmental, permitting, legal or other reasons that would prevent it from advancing the project.

The PFS was compiled by M3 Engineering & Technology Corp. (“M3”) which was engaged by Midas Gold Corp.’s wholly owned subsidiary, Midas Gold, Inc. (“MGI”), to evaluate potential options for the possible redevelopment of the Stibnite Gold Project based on information available up to the date of the PFS. Givens Pursley LLP (land tenure), Kirkham Geosystems Ltd. (mineral resources), Blue Coast Metallurgy Ltd. (metallurgy), Pieterse Consulting, Inc. (autoclave), Independent Mining Consultants Inc. (mine plan and mineral reserves), Allen R. Anderson Metallurgical Engineer Inc. (recovery methods), HDR Engineering Inc. (access road), SPF Water Engineering, LLC (water rights) and Tierra Group International Ltd. (tailings, water management infrastructure and closure) also contributed to the PFS. Additional details of responsibilities are provided in the technical report filed on SEDAR in December 2014. The PFS supersedes and replaces the technical report entitled ‘Preliminary Economic Assessment Technical Report for the Golden Meadows Project, Idaho’ prepared by SRK Consulting (Canada) Inc. and dated September 21, 2012 (PEA) and that PEA should no longer be relied upon.

NON-IFRS REPORTING MEASURES

“Cash Costs”, “All-in Sustaining Costs” and “Total costs” are not Performance Measures reported in accordance with International Financial Reporting Standards (“IFRS”). These performance measures are included because these statistics are key performance measures that management uses to monitor performance. Management uses these statistics to assess how the Project ranks against its peer projects and to assess the overall effectiveness and efficiency of the contemplated mining operations. These performance measures do not have a meaning within IFRS and, therefore, amounts presented may not be comparable to similar data presented by other mining companies. These performance measures should not be considered in isolation as a substitute for measures of performance in accordance with IFRS.

EXHIBIT 2

to

Declaration of Michael Bogert

RESTORE THE SITE

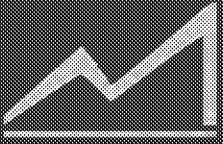
THE STIBNITE GOLD PROJECT

Valley County, Idaho

March 2018

Draft - For Review Purposes Only

AGENDA



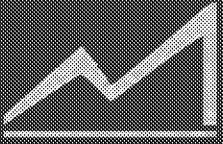
1. NPDES Update
2. ESA Discussion
3. Path Forward
4. Update of State and Federal Interagency Socialization Efforts for SGP
5. Discussion



NPDES UPDATE

Draft - For Review Purposes Only

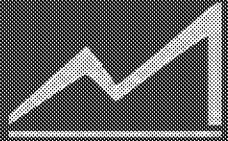
NPDES UPDATE



Preliminary Permit Application Development

- Initial NPDES Pre-Application meeting on June 22, 2017, at U.S. Environmental protection Agency (EPA) Region 10 office.
- Stibnite Gold Project (SGP) water resources tour on July 19, 2017.
- Midas Gold Idaho, Inc. (Midas Gold) water modeling efforts have included the development of work plans and existing conditions (i.e., calibration) modeling and reporting.
- Midas Gold has provided monthly technical sessions on water modeling efforts (Oct-17, Nov-17, Dec-17, Feb-18).
- Midas Gold team has developed a preliminary draft NPDES permit application while the water modeling efforts have been progressing.

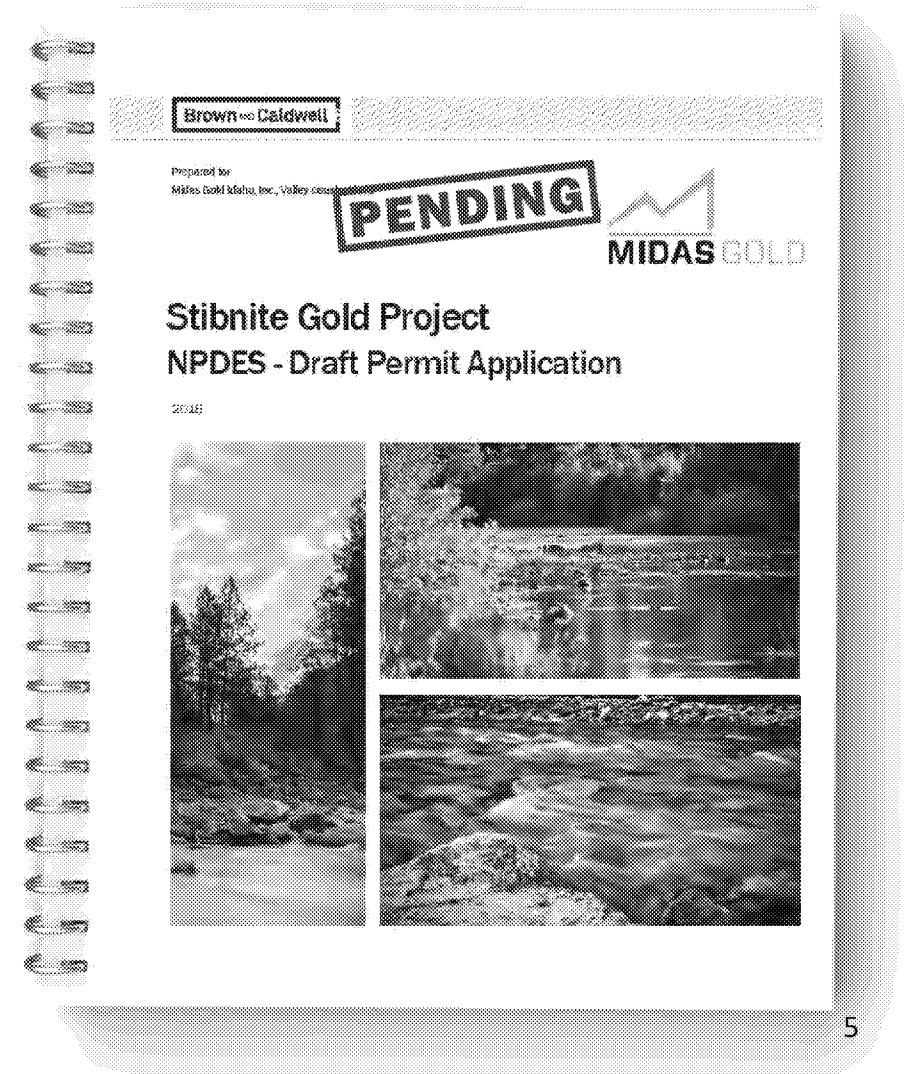
NPDES UPDATE



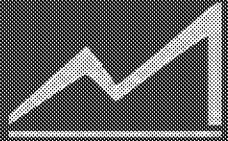
Preliminary Draft Permit Application

- “Preliminary” draft developed for internal review and consistency with other ongoing activities. Awaiting results from modeling efforts to finalize the package.
- Application package is being designed to allow agency permit writers to efficiently review the data, plans, and specifications necessary to develop a permit.
- Information is drawn from numerous sources. Sources are cited to substantiate authenticity and applicability. Some information has been reproduced in its original form, while some is being adapted to make it more concise and/or more directly applicable.

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NPDES UPDATE



Section 3 – Overview of NPDES Application Package

- Intended to generally align with the EPA NPDES application forms applicable to the SGP (Form 1 and Form 2D)
- Intended to facilitate preparation of a standard NPDES Permit Fact Sheet and development of permit conditions.
- Midas Gold has also relied on the 2003 document *EPA and Hardrock Mining: A Sourcebook for Industry in the Northwest and Alaska*.

Draft - For Review Purposes Only

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1. Cover Letter
2. Table of Contents
3. Overview of NPDES Application Package
4. Introduction to the Stibnite Gold Project
5. EPA NPDES Application Forms
6. Maps
7. Outfall Information
8. Existing Flows and Hydrology
9. Existing Water Quality
10. Potential Pollutant Sources
11. Treatment
12. Effluent Characterization
13. Effluent Limitations
14. Antidegradation Considerations
15. Mixing Zone Classification
16. Aquatic Resources
17. Monitoring
18. Supplemental Information
19. References
20. Appendices



Overview of NPDES Permit Application Package

This section will be updated as the application is finalized for submittal.

This application package for a National Pollution Discharge Elimination System (NPDES) permit provides a series of information types intended to allow agency permit writers to efficiently review the data, plans, and specifications necessary to develop a permit for the Stibnite Gold Project (Project) proposed by Midas Gold of Idaho, Inc. (Midas Gold).

Information in this application is drawn from numerous sources. Every attempt has been made to cite the information sources provided herein to substantiate its authenticity and applicability. In some cases, information has been reproduced from the source in its original form, while in other cases, it has been adapted to make it more concise and/or more directly applicable.

The presentation order of this package is intended to generally align with the U.S. Environmental Protection Agency (EPA) NPDES application forms applicable to the Project (Form 1 and Form 2D). The format and nature of the information provided is intended to facilitate preparing a standard NPDES Permit Fact Sheet and developing permit conditions. Midas Gold has also relied on the 2003 document *EPA and Hardrock Mining: A Sourcebook for Industry in the Northwest and Alaska* for guidance in preparing this application package.

Section 1

A brief **Cover Letter** is provided to formally convey the application package to the EPA.

Section 2

The **Table of Contents** provides the date of original submittal of each application component. Midas Gold anticipates that some application components may require a revision or that additional components may be added as a result of a Request for Additional Information or third party comments. The Table of Contents is structured to show submittal dates of revised or new components during the application review process.

Section 3

This **Overview of the NPDES Application Package** briefly summarizes the content of each section and serves as an annotated table of contents for the reviewer to facilitate locating specific information.

Section 4

The **Overview of the Stibnite Gold Project** is essentially an extraction of pertinent information from the Plan of Restoration and Operations (PRO) produced by Midas Gold and provided to the NEPA review team. It is intended to frame water resource-related aspects of the project for the NPDES permit reviewers in a far more concise document than the PRO itself.

Section 5

Two **EPA forms** have been filled out for this application package. **EPA NPDES Form 1** provides general information on the Applicant. Form 1 also indicates that **EPA NPDES Form 2D** is the appropriate form for the Stibnite Gold Project, which is located at a site with a long history of mining but





has not previously had an NPDES permit. Form 2D provides more detailed information on the water quality and quantity aspects of the proposed mine but also serves as a general guide to much of the remaining information presented in this application package.

Section 6

Various **Maps** are embedded within the components of this application package for convenience while reviewing the various sections (particularly for those reading electronic versions rather than printed copies). However, several maps are provided in a separate tabbed section for quick reference and review. These include maps providing information such as site location, project area, major surface water features, topography, land cover, proposed mining and disturbance areas, facilities, and outfall locations. Compiling these figures in a single location within the application package is intended to make it easier to find primary geographic information and reduce redundant graphics in the application.

Section 7

The section on **Outfall Information** provides basic details on the proposed outfalls, including locations, areas anticipated to potentially generate discharge to each outfall, and activities potentially affecting the water quality, quantity, and timing of discharges from the outfalls. More detailed information on water quality, quantity, and timing is provided in subsequent sections. Five proposed outfalls are indicated in this application; however, Midas Gold is only seeking approval for four of those outfalls under the initial permit. Three of those four (Outfalls 001, 002, and 003) are for contact water associated with mining operations, and the fourth (004) is for the reclaimed sanitary wastewater from the employee lodging facility. The fifth outfall (005) is associated with the Tailings Storage Facility (TSF), which is expected to be a zero-discharge facility until the very end of mine life and during closure. It will be addressed in subsequent permit renewals.

Section 8

Information on **Existing Flows and Hydrology** is presented in this section, based upon extensive site-specific data collection, as well as data analysis and modeling to interpolate and estimate hydrologic patterns at an even finer scale than the monitoring data provide.

Section 9

Midas Gold has accumulated a large database on **Existing Water Quality** for the site, based on its monitoring program. This section provides an overview of that data with a focus on the surface waters proposed to be receiving waters for the project's outfalls. As this section indicates, existing water quality at the project site reflects the effects of both a century of prior mining activities by other companies and also the highly mineralized nature of the project site. These conditions create the potential for Midas Gold to ultimately improve water quality through its mining and restoration activities.

Section 10

Potential Pollutant Sources from proposed mining operations are addressed in a separate section. The primary source of pollutants for water associated with mining operations is from contact with development rock and the ore body. When and if necessary, contact water would be treated as needed to meet permit limits and discharged through Outfalls 001, 002, or 003, depending upon which area has active mining or reclamation activities and how much precipitation and groundwater input there has been in the contributing area. The wastewater stream from the employee lodging facility will have a different





set of potential pollutants and after treatment, would discharge via Outfall 004. The TSF will contain process water from the ore processing plant, which may include several potential pollutants in addition to those in contact water. TSF water would be treated to meet permit limits and discharged as needed through Outfall 005 near the end of mine life and during closure.

Section 11

The section on **Treatment Technologies** includes details on the proposed methods to remove potential pollutants before discharging to surface waters. For the contact water outfalls (001, 002, 003), the primary proposed technology is iron co-precipitation. Various other supplemental treatments are also available to ensure removal of all constituents to attain water quality standards and permit limits. The mine is expected to be a zero-discharge operation through at least the first 5 years of mining, thus there will be additional time to evaluate contact water quality and fine-tune the treatment train prior to the need to discharge treated contact water to surface waters. The sanitary waste stream at the employee quarters will be treated with a membrane bioreactor system to attain Class 1 reuse standards and discharged via Outfall 004. No discharge is anticipated for water from the TSF until near the end of mine life. At that time, the iron co-precipitation system and supplemental treatment technologies, potentially including reverse osmosis, are anticipated to be employed if TSF water must be released to surface waters.

Section 12

The **Effluent Characterization** section provides information on the composition, magnitude, and timing of water anticipated to be discharged through permitted outfalls. Because the need to discharge water is expected to be entirely based upon meteoric water impinging on mining and processing areas, and on dewatering of mine pits, the amount of water needing to be discharged will vary throughout the seasons and mine life. Overall, only a small fraction of the contact water will require treatment and discharge, as it will largely be contained within the operational areas and used as process water. The sanitary waste stream from the employee lodging area will be more consistent in both magnitude and composition because it will not be subject to inputs from precipitation and groundwater.

Section 13

The section on **Effluent Limitations** addresses both Technology-Based Effluent Limitations (TBELs) and Water Quality-Based Effluent Limitations (WQBELs). It provides background from 40 CFR Part 440 regarding TBELs and addresses the need for NPDES permit development to consider specific conditions in the receiving waters via development of WQBELs. Prioritizing water quality protection for designated uses in the receiving waters must be addressed while considering the existing water quality conditions resulting from both prior mining activities and the naturally mineralized conditions at the site.

Section 14

Antidegradation Considerations are addressed in this section, which looks to balance the need for protective NPDES permit limits with the fact that some of the surface waters at the site do not currently meet applicable water quality standards for certain parameters. This section includes a life-of-mine view that looks to the water quality benefits of reprocessing former mine residuals, while managing the discharge of water from the proposed mining operations. Antidegradation determinations are made by the State of Idaho for incorporation into an NPDES permit.



**Section 15**

The Section on **Mixing Zone Considerations** considers the potential for mixing zones within the receiving waters below outfalls. Mixing zones provide a small volume within receiving waters where one or more parameters may exceed water quality criteria or permit limits as the discharge is mixed with the ambient flow until concentrations are within the allowable range. Such zones can be allowed by the State of Idaho for incorporating into an NPDES permit.

Section 16

Protection of **Aquatic Resources** is a primary focus during mining operations and is also a principal facet of the overall restoration plan for the site. Three listed salmonids occupy streams on or near the project site, and portions of the on-site streams are Designated Habitat for these species. By routing surface water around mining and other areas of major disturbance, reprocessing contaminated materials from prior mining operations, and discharging only treated water to surface waters, Midas Gold will protect and improve habitat for these listed species and the rest of the aquatic communities at the project site.

Section 17

Environmental **Monitoring** will be an ongoing commitment by Midas Gold throughout mining operations and extending through closure and final reclamation. Water quality monitoring is addressed in this section as an expected requirement of the NPDES approval, as well as ongoing ambient data collection.

Section 18

The section on **Supplemental Information** provides details necessary or beneficial for application review but ancillary to the technical information contained in the sections outlined above. This section includes the status of review or approvals by other agencies that must be considered by the Environmental Protection Agency or Idaho Department of Environmental Quality in an NPDES review and additional information associated with anticipated NPDES permit conditions.

Section 19

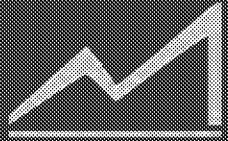
References are cited for documents referenced in this application package to substantiate sources of technical information and to allow reviewers the ability to consult original sources if desired.

Section 20

Appendices are included to provide more detailed information than could conveniently be included within the sections above. Since references were cited for many sources of data and information, these appendices provide only information deemed to be directly pertinent to reviewing this application.



NPDES UPDATE



EPA

United States
Environmental Protection
Agency

Office of
Water
Washington, DC 20460

EPA Form 3510-1
October 2010

**Application Form 1 – General
Information**

Consolidated Permits Program

This form must be completed by all persons applying for a permit under the Consolidated Permits Program. See the general instructions on Form 1 for guidance about other documents required to be filed.

Section 5 – Application Forms

- Form 1 (EPA Form 3510-1)
- Form 2D (EPA Form 3510-2D)

Draft Potential Parameter List

- Outfall 003 – Processing Plant
- Outfall 004 – Stibnite Lodge

EPA

United States
Environmental Protection
Agency


Office of Water
Washington, DC 20460

EPA Form 3510-2D
August 1990

Application Form 2D —

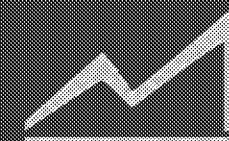
**New Sources and
New Dischargers:**

**Application for Permit to
Discharge Process
Wastewater**

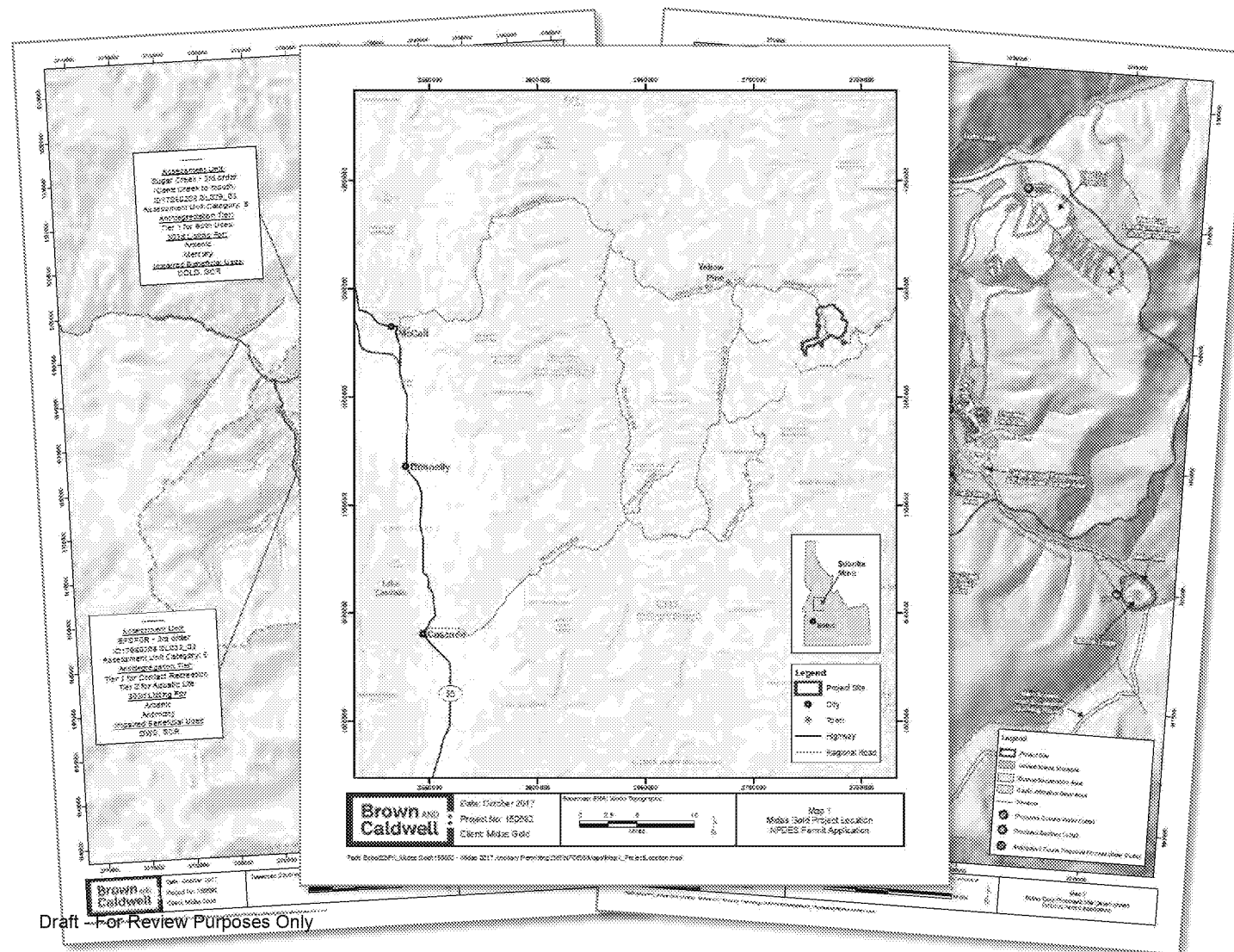
Please print or type in the unshaded areas only			EPA I.D. NUMBER (copy from Item 1 of Form 1)						
Form 2D NPDES		New Sources and New Dischargers Application for Permit to Discharge Process Wastewater							
I. Outfall Location									
For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.									
Outfall Number (list)	Latitude			Longitude			Receiving Water (name)		
	Deg.	Min.	Sec.	Deg.	Min.	Sec.			
001	44.00	55.00	59.00	115.00	20.00	11.00	East Fork South Fork Fork Salmon River (EFSFSR) (COORDINATES ARE APPROXIMATE)		
002	44.00	56.00	5.00	115.00	19.00	14.00	West End Creek (COORDINATES ARE APPROXIMATE)		
003	44.00	54.00	36.00	115.00	19.00	51.00	EFSFSR (COORDINATES ARE APPROXIMATE)		
004	44.00	53.00	22.00	115.00	18.00	73.00	EFSFSR (COORDINATES ARE APPROXIMATE)		
005	44.00	54.00	32.00	115.00	19.00	51.00	EFSFSR (COORDINATES ARE APPROXIMATE) - Outfall not proposed for operation in this application		
II. Discharge Date (When do you expect to begin discharging?)									
III. Flows, Sources of Pollution, and Treatment Technologies									
A. For each outfall, provide a description of: (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and storm water runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.									
Outfall Number	1. Operations Contributing Flow (List)		2. Average Flow (Include Units)		3. Treatment (Description or List codes from Table 2D-1)				
001	Yellow Pine Pit mining area		TBD		staged chemical/physical precipitation				
002	West End Pit mining area		TBD		staged chemical/physical precipitation				
003	Mill site		TBD		staged chemical/physical precipitation				
004	Employee lodging facility		0.12 cfs		Membrane BioReactor				
005	Tailings Storage Facility		No discharge in 1st cycle		TBD - no process water discharge in initial permit cycle.				
	Details on operations				Details on treatment provided in supplemental documentation.				
	provided in supplemental								
	documentation.								

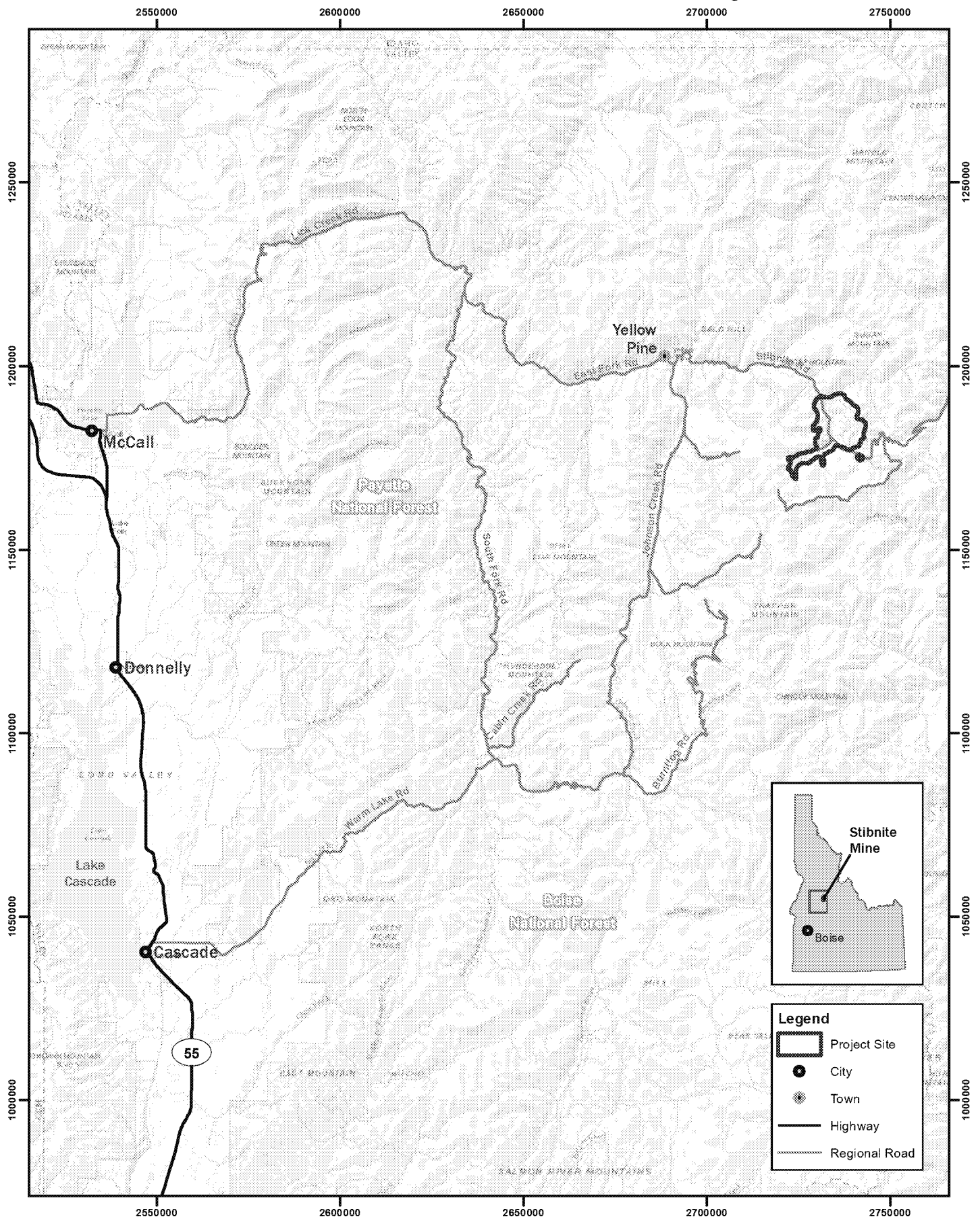
CONTINUED FROM THE FRONT		EPA I.D. NUMBER <i>(copy from Item 1 of Form 1)</i>	Outfall Number Outfall 003
V. Effluent Characteristics			
<p>A and B: These items require you to report estimated amounts <i>(both concentration and mass)</i> of the pollutants to be discharged from each of your outfalls. Each part of this item addresses a different set of pollutants and should be completed in accordance with the specific instructions for that part. Data for each outfall should be on a separate page. Attach additional sheets of paper if necessary.</p> <p>General Instructions <i>(See table 2D-2 for Pollutants)</i> Each part of this item requests you to provide an estimated daily maximum and average for certain pollutants and the source of information. Data for all pollutants in Group A, for all outfalls, must be submitted unless waived by the permitting authority. For all outfalls, data for pollutants in Group B should be reported only for pollutants which you believe will be present or are limited directly by an effluent limitations guideline or NSPS or indirectly through limitations on an indicator pollutant.</p>			
1. Pollutant	2. Maximum Daily Value <i>(include units)</i>	3. Average Daily Value <i>(include units)</i>	4. Source <i>(see instructions)</i>
Biochem. Oxygen Demand (BOD)	TBD	TBD	4 - Best professional estimate
Chemical Oxygen Demand (COD)	TBD	TBD	4 - Best professional estimate
Total Organic Carbon (TOC)	TBD	TBD	4 - Best professional estimate
Total Suspended Solids (TSS)	TBD	TBD	4 - Best professional estimate
Flow	TBD	TBD	4 - Best professional estimate
Ammonia (as N)	TBD	TBD	4 - Best professional estimate
Temperature (winter)	TBD	TBD	4 - Best professional estimate
Temperature (summer)	TBD	TBD	4 - Best professional estimate
pH	TBD	TBD	4 - Best professional estimate
Aluminum, Total	TBD	TBD	4 - Best professional estimate
Iron, Total	TBD	TBD	4 - Best professional estimate
Antimony, Total	TBD	TBD	4 - Best professional estimate
Arsenic, Total	TBD	TBD	4 - Best professional estimate
Cadmium, Total	TBD	TBD	4 - Best professional estimate
Copper, Total	TBD	TBD	4 - Best professional estimate
Lead, Total	TBD	TBD	4 - Best professional estimate
Manganese, Total	TBD	TBD	4 - Best professional estimate
Mercury, Total	TBD	TBD	4 - Best professional estimate
Zinc, Total	TBD	TBD	4 - Best professional estimate
E. coli	TBD	TBD	4 - Best professional estimate
Nitrate-nitrite	TBD	TBD	4 - Best professional estimate
Total phosphorus	TBD	TBD	4 - Best professional estimate

CONTINUED FROM THE FRONT		EPA I.D. NUMBER <i>(copy from Item 1 of Form 1)</i>	Outfall Number Outfall 004
V. Effluent Characteristics			
<p>A and B: These items require you to report estimated amounts (<i>both concentration and mass</i>) of the pollutants to be discharged from each of your outfalls. Each part of this item addresses a different set of pollutants and should be completed in accordance with the specific instructions for that part. Data for each outfall should be on a separate page. Attach additional sheets of paper if necessary.</p> <p>General Instructions <i>(See table 2D-2 for Pollutants)</i> Each part of this item requests you to provide an estimated daily maximum and average for certain pollutants and the source of information. Data for all pollutants in Group A, for all outfalls, must be submitted unless waived by the permitting authority. For all outfalls, data for pollutants in Group B should be reported only for pollutants which you believe will be present or are limited directly by an effluent limitations guideline or NSPS or indirectly through limitations on an indicator pollutant.</p>			
1. Pollutant	2. Maximum Daily Value <i>(include units)</i>	3. Average Daily Value <i>(include units)</i>	4. Source <i>(see instructions)</i>
Biochem. Oxygen Demand (BOD)	TBD	TBD	4 - Best professional estimate
Chemical Oxygen Demand (COD)	TBD	TBD	4 - Best professional estimate
Total Organic Carbon (TOC)	TBD	TBD	4 - Best professional estimate
Total Suspended Solids (TSS)	TBD	TBD	4 - Best professional estimate
Flow	TBD	TBD	4 - Best professional estimate
Ammonia (as N)	TBD	TBD	4 - Best professional estimate
Temperature (winter)	TBD	TBD	4 - Best professional estimate
Temperature (summer)	TBD	TBD	4 - Best professional estimate
pH	TBD	TBD	4 - Best professional estimate
Total Residual Chlorine	TBD	TBD	4 - Best professional estimate
E. coli	TBD	TBD	4 - Best professional estimate
Nitrate-Nitrite (as N)	TBD	TBD	4 - Best professional estimate
Oil and Grease	TBD	TBD	4 - Best professional estimate
Phosphorus (as P) Total	TBD	TBD	4 - Best professional estimate
Sulfate (as SO4)	TBD	TBD	4 - Best professional estimate



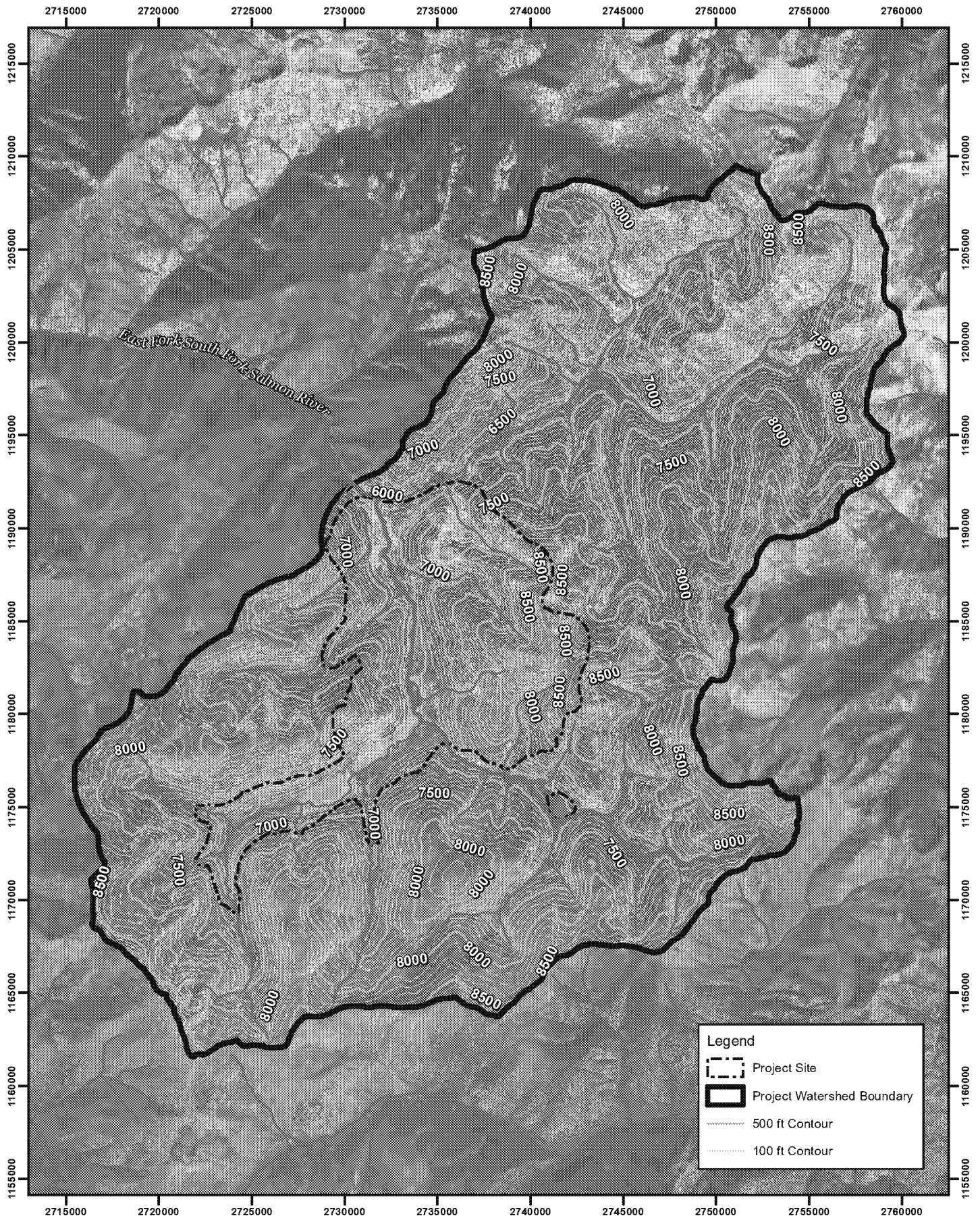
- Map 1 – Project Location
- Map 2 – Project Area Topography
- Map 3 – Project Site Topography
- Map 4 – Regional SW Hydrology
- Map 5 – SW Features
- Map 6 – Outfall Locations
- Map 7 – Proposed Site Development
- Map 8 – NPDES Form 1, Item XI
- Map 9 – 2014 303(d) Listed Streams
- Map 10 – WQ Monitoring Locations





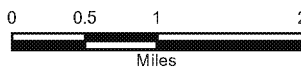
	Date: October 2017	Basemap: ESRI World Topographic Miles		Map 1 Midas Gold Project Location NPDES Permit Application
	Project No: 150692			
	Client: Midas Gold			

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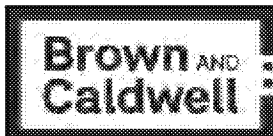
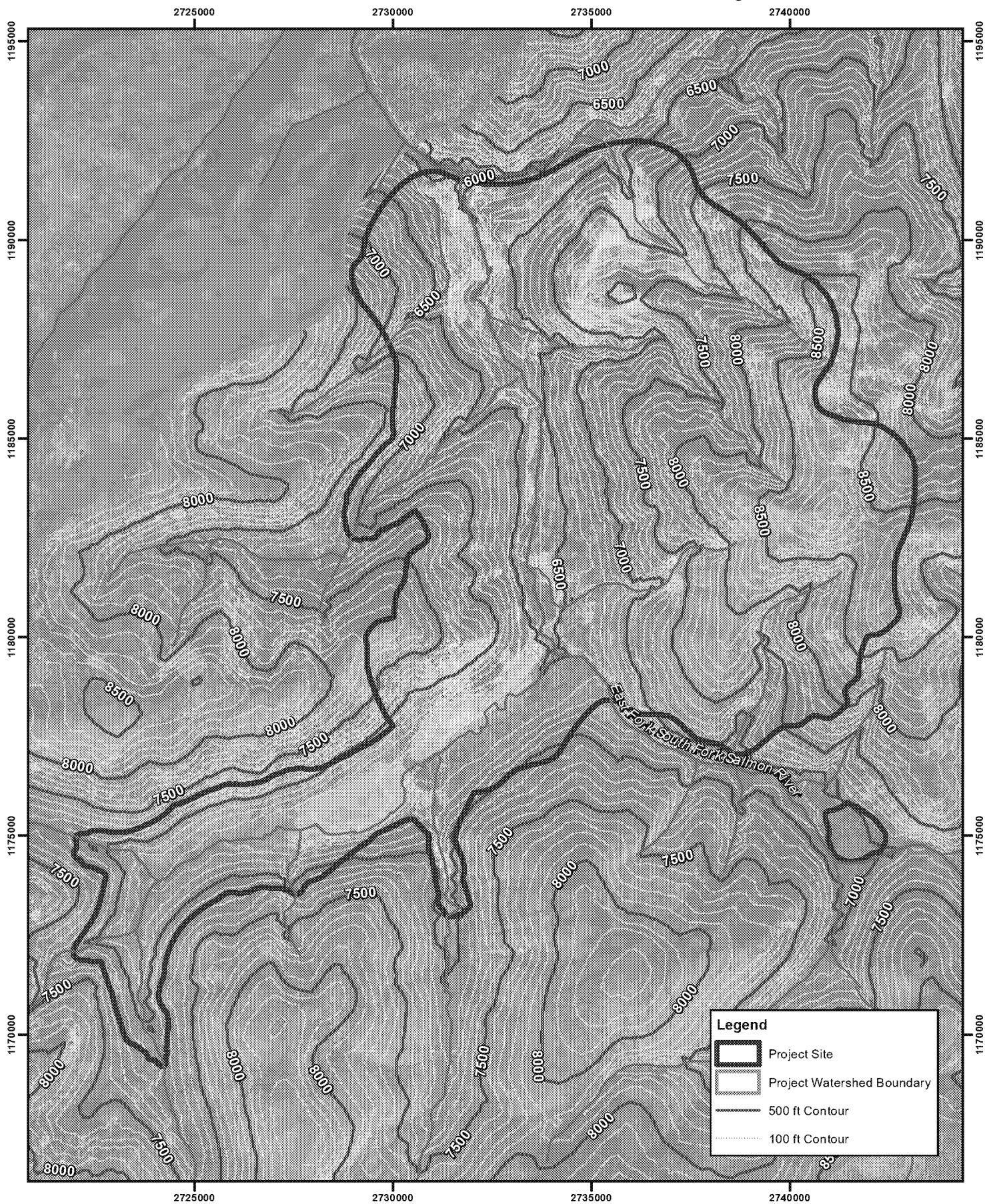


Date: October 2017
Project No: 150692
Client: Midas Gold

Basemap: Midas Gold Aerial Imagery

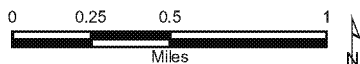


Map 2
Midas Gold Project Area Topography
NPDES Permit Application

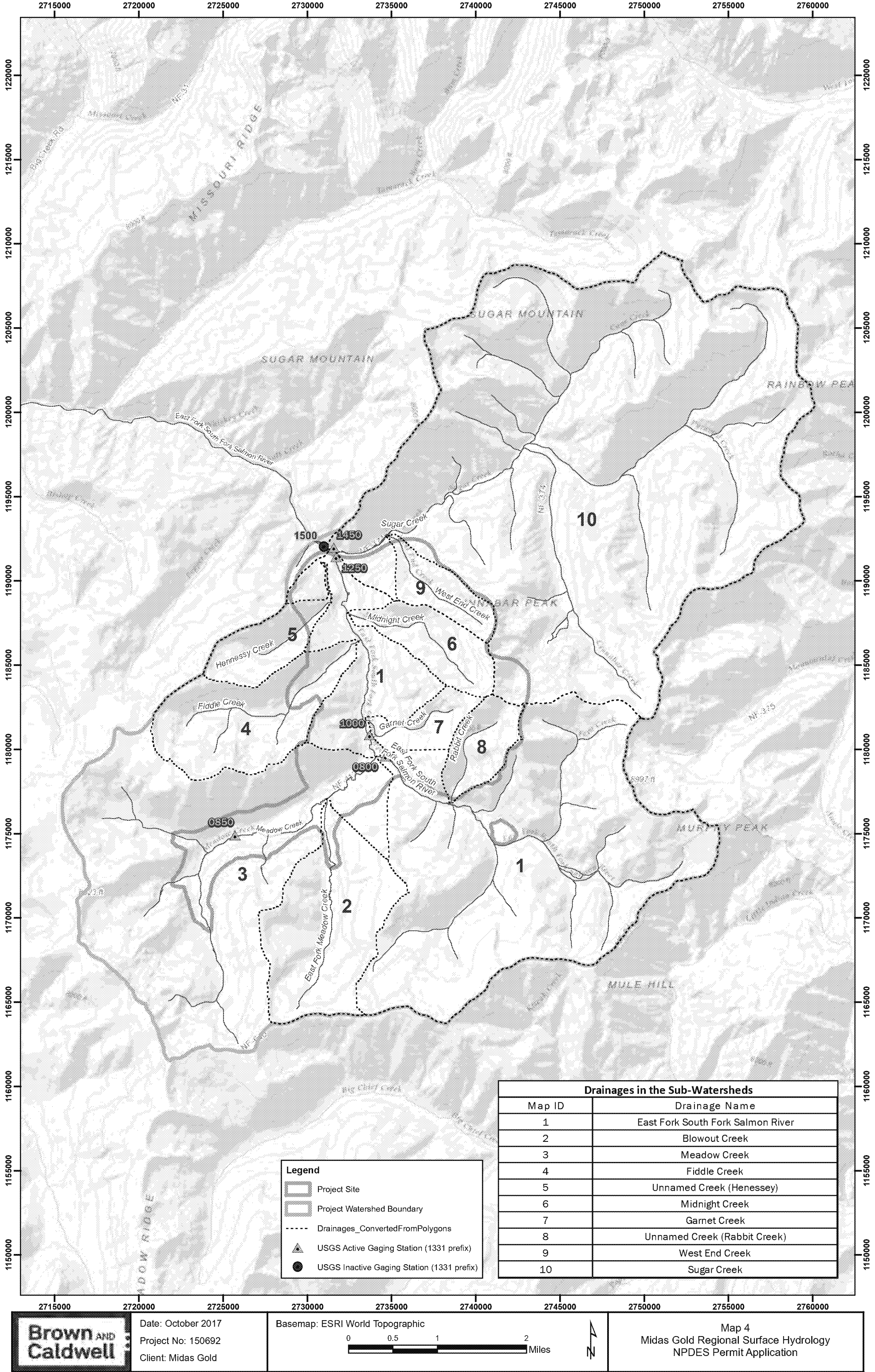


Date: October 2017
 Project No: 150696
 Client: Midas Gold

Basemap: Midas Aerial Imagery



Map 3
 Midas Gold Project Site Topography
 NPDES Permit Application



Date: October 2017
Project No: 150692
Client: Midas Gold

Basemap: ESRI World Topographic

00.512

Miles

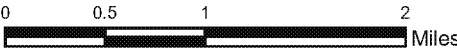
N

Map 4
Midas Gold Regional Surface Hydrology
NPDES Permit Application

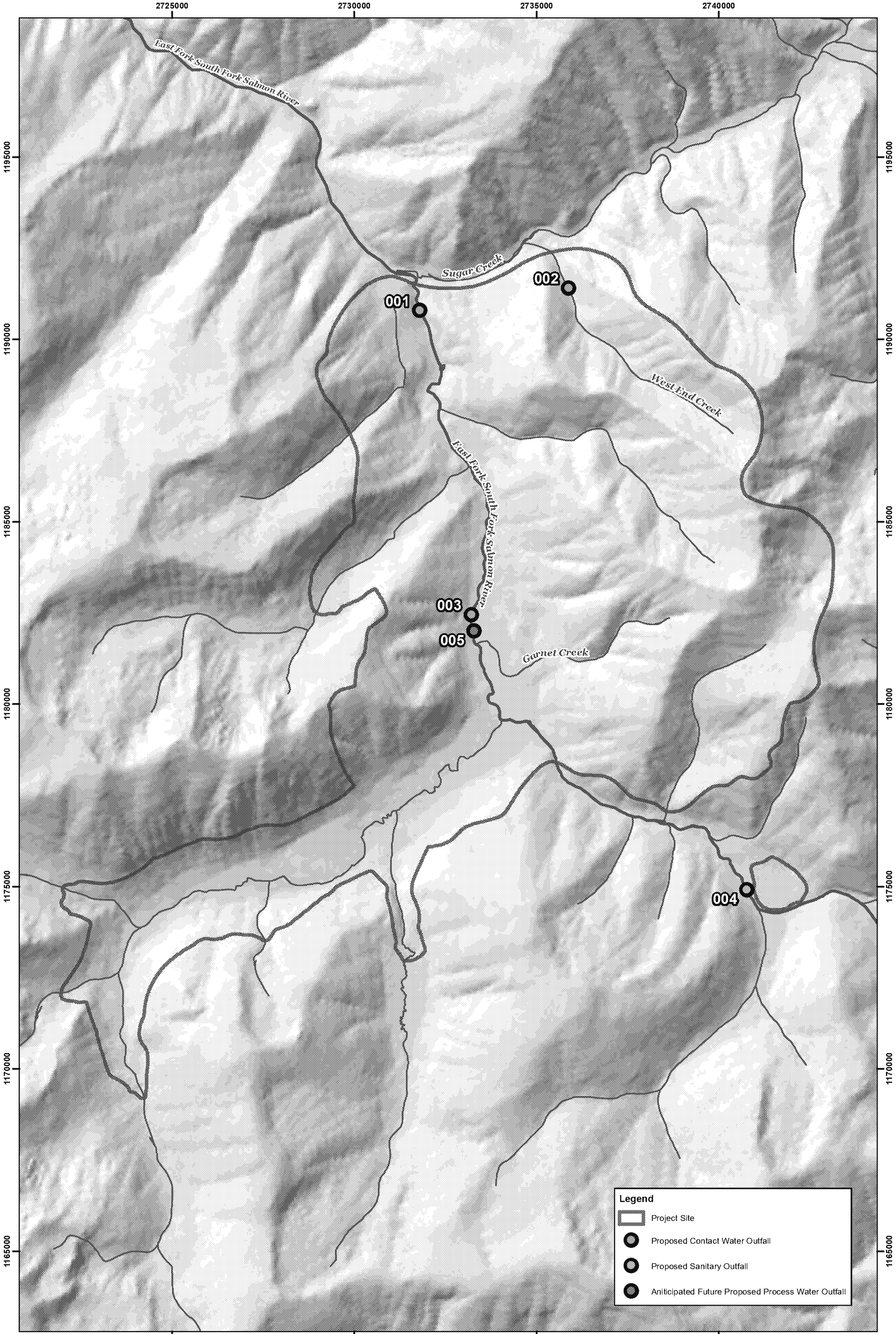


Date: June 2017
Project No: 150691
Client: Midas Gold

Basemap: Midas Gold Hillshade



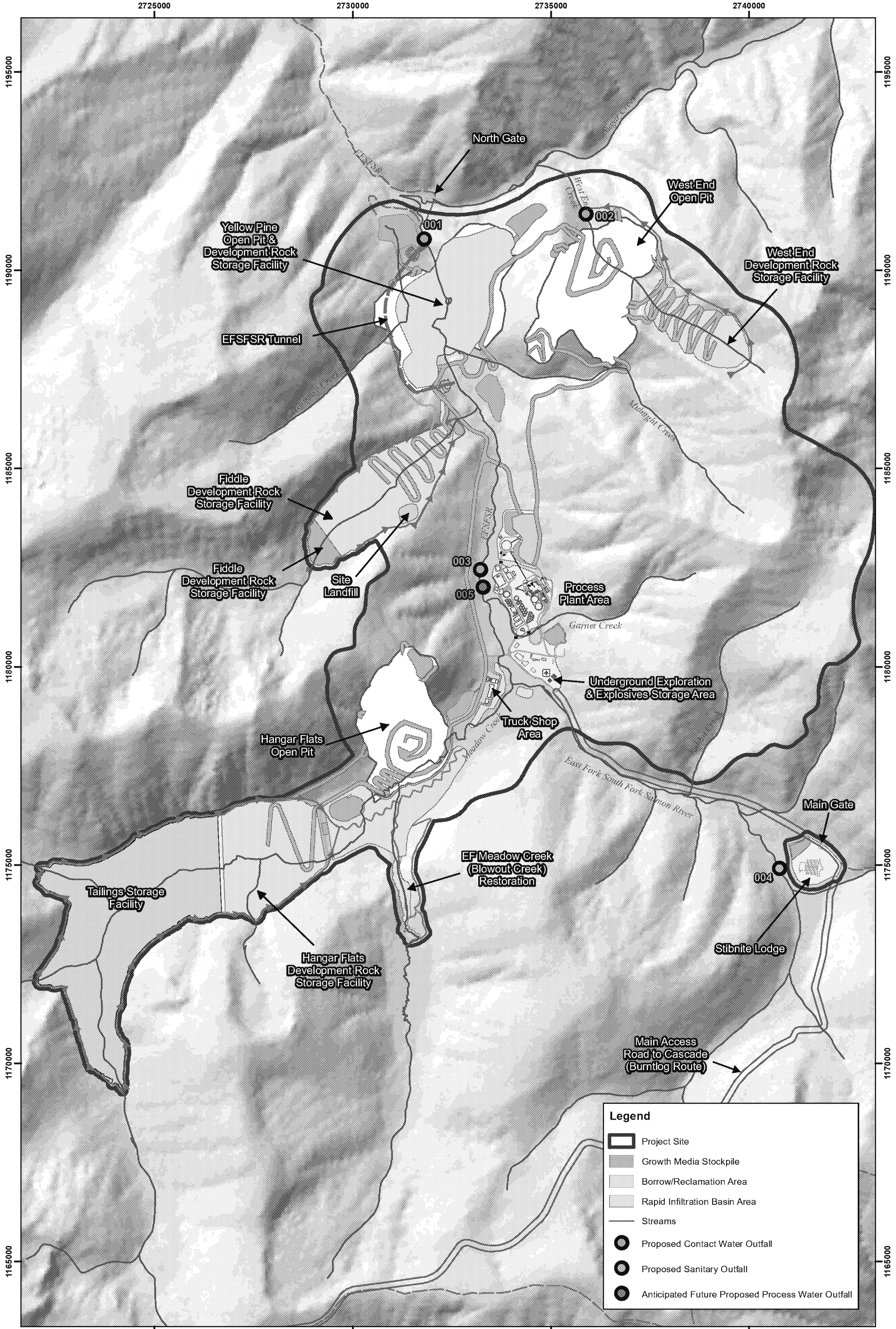
Map 5
Midas Gold Site Surface Water Features
NPDES Permit Application



Legend

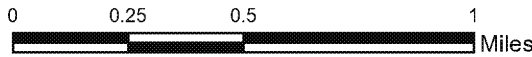
- Project Site
- Proposed Contact Water Outfall
- Proposed Sanitary Outfall
- Anticipated Future Proposed Process Water Outfall

	Date: June 2017	Basemap: Midas Gold Hillshade	 0 0.25 0.5 1 Miles		Map 6 Midas Gold Proposed Outfall Locations NPDES Permit Application
	Project No: 150691				
	Client: Midas Gold				



Date: October 2017
Project No: 150692
Client: Midas Gold

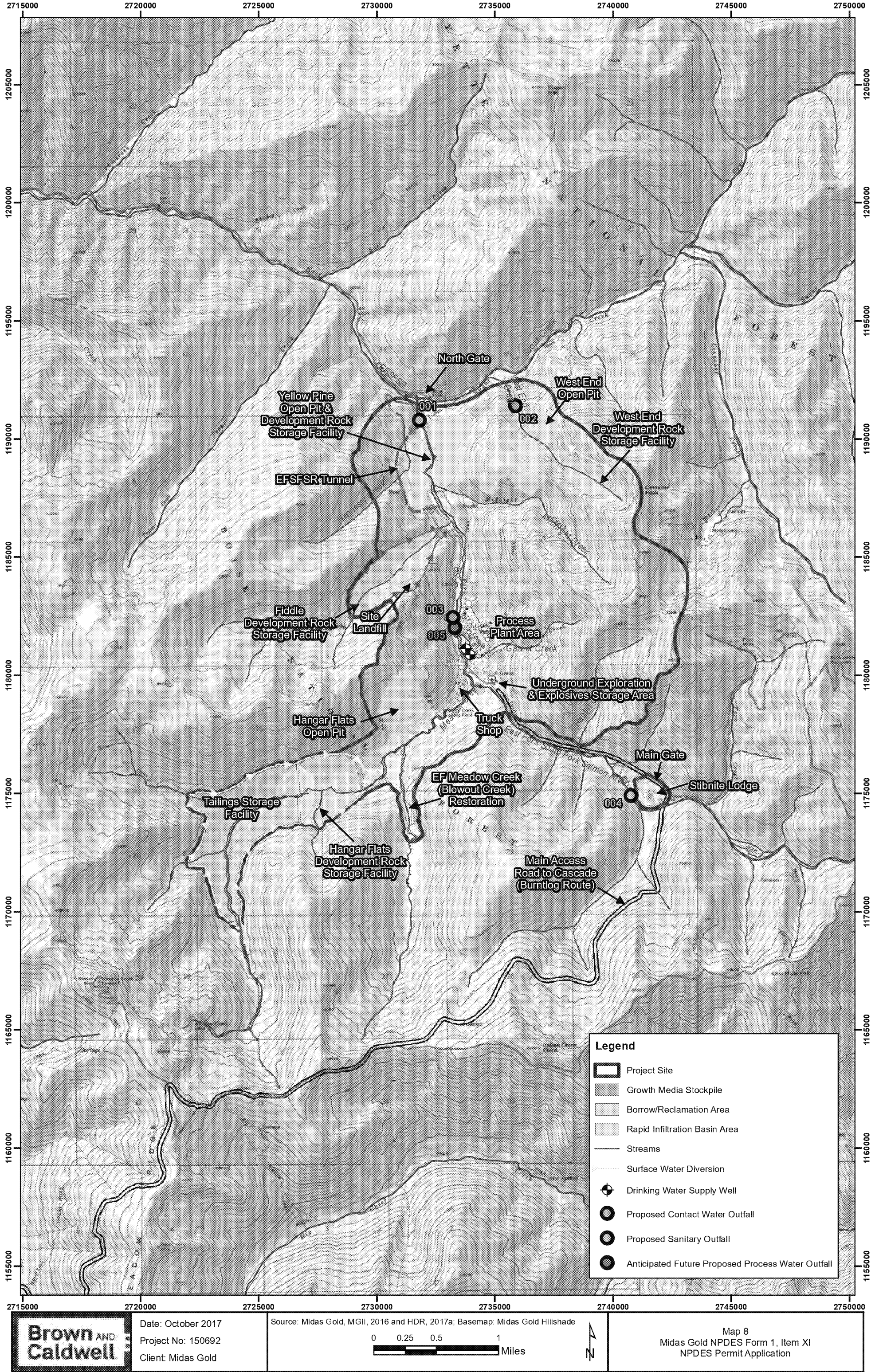
Source: Midas Gold, MGII, 2016 and HDR, 2017a; Basemap: Midas Gold Hillshade



Map 7
Midas Gold Proposed Site Development
NPDES Permit Application

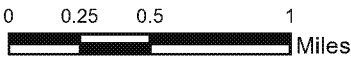
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Date: October 2017
Project No: 150692
Client: Midas Gold

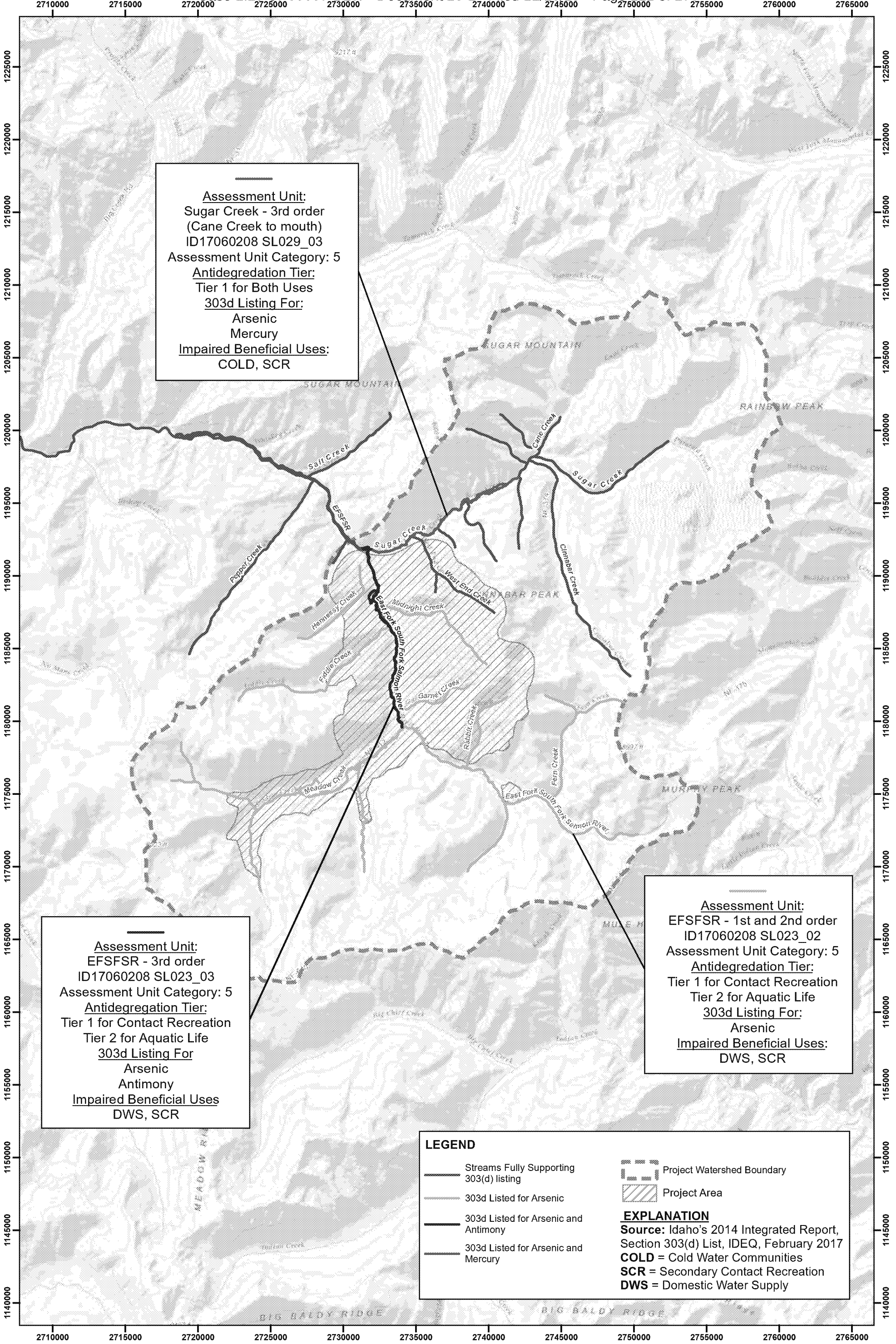
Source: Midas Gold, MGII, 2016 and HDR, 2017a; Basemap: Midas Gold Hillshade



Map 8
Midas Gold NPDES Form 1, Item XI
NPDES Permit Application

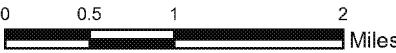
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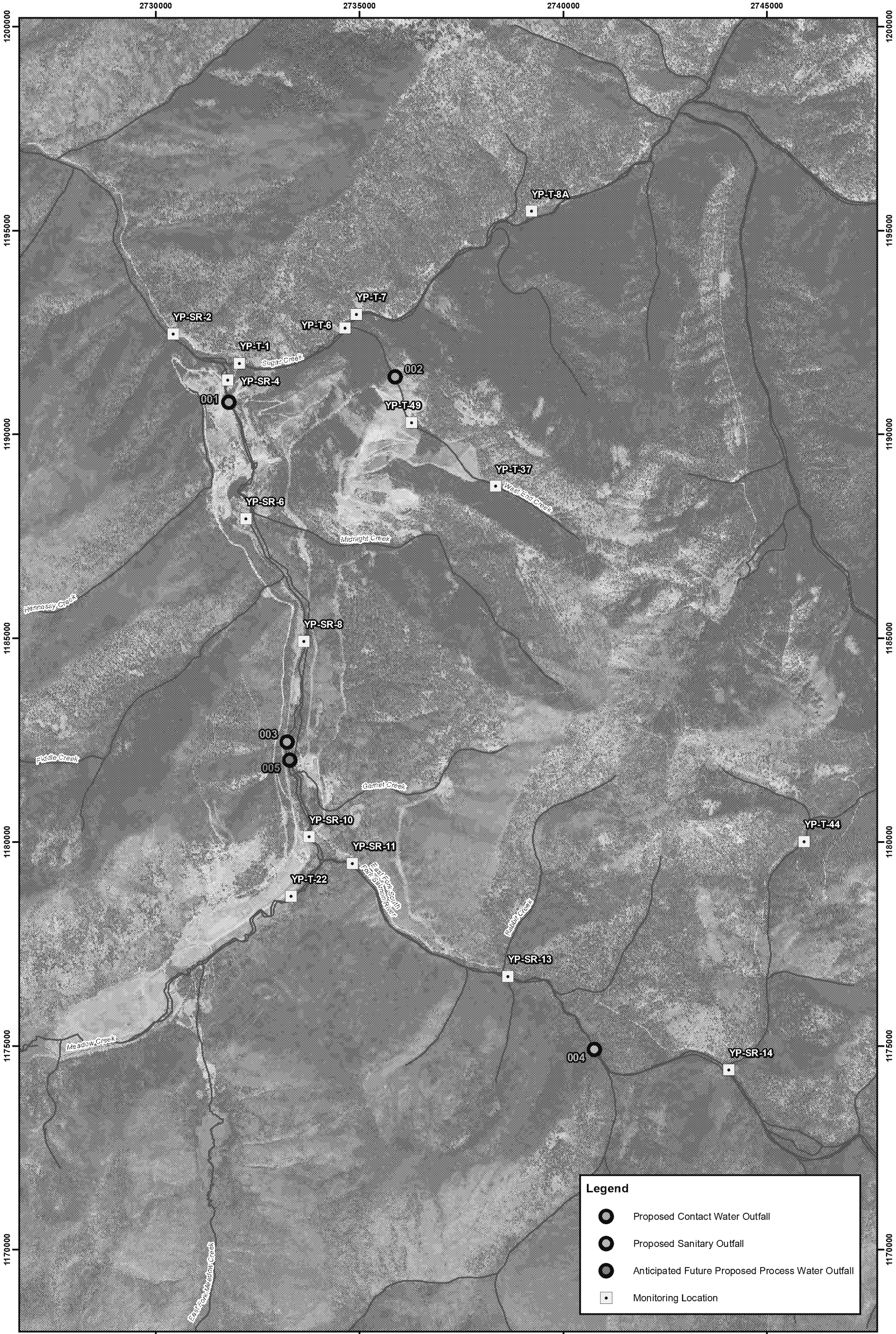
Date: October 2017
Project No: 150692
Client: Midas Gold




Basemap: ESRI World Topographic



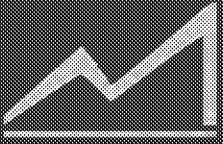
Map 9
Midas Gold 2014 303d Listed Streams
and Beneficial Use Designations
NPDES Permit Application

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	Date: October 2017	<p>Sources: MGI, 2016 and HDR, 2017a; Basemap: Midas Gold Aerial Imagery</p> <p>0 0.25 0.5 1 Miles</p> 		<p>Map 10</p> <p>Midas Gold Water Quality Monitoring Locations</p> <p>NPDES Permit Application</p>
	Project No: 150692			
	Client: Midas Gold			

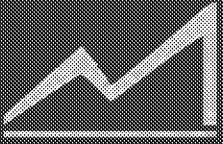
NPDES QUESTIONS



Our Questions on NPDES

- What is EPA's current outlook on who will be writing/issuing the SGP NPDES permit? Is there a date after which applications would be directed to Idaho Department of Environmental Quality (IDEQ)? If EPA starts reviewing/writing a permit, would it complete the process even if it overlaps the delegation to IDEQ?
- Does EPA Region 10 have any thoughts on the recent/current cases looking at Clean Water Act applicability to discharges to groundwater?
- Has there been any change in the way EPA Region 10 is looking at arsenic since the settlement in 2016?
- Has there been any change in EPA Region 10's interpretation of IDEQ's Antidegradation Policy (i.e., not allowing for a 10% de minimis increase in bioaccumulative pollutant level between ambient concentration and the criterion)?

NPDES QUESTIONS

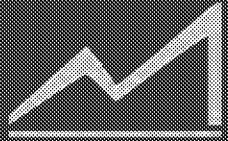


Our Questions on NPDES

- Does EPA have advice regarding the optimal timing between the Environmental Impact Statement process and NPDES permit review? Should submittal dates be arranged or synchronized in a particular manner to expedite reviews? What additional considerations are there for alternatives?
- Can EPA confirm that it is able to issue a permit based on an application that does not include results of treatment pilot testing? If pilot testing is not completed before permit issuance, what would EPA expect in order to have reasonable assurance of treatment capability as part of compliance monitoring, special study, etc.?
- What level of planning or engineering design would EPA expect in order to have reasonable assurance of the ability to store or move water within the site to optimize reuse, treatment, and discharge (e.g., capturing water at the toe of a development rock storage area and pumping it to the plant for use in the process loop)?
- Does EPA have any thoughts on which general permit (i.e., MSGP and/or CGP) should be used for “off-site” facilities, transmission line, and access roads? (see next slide)

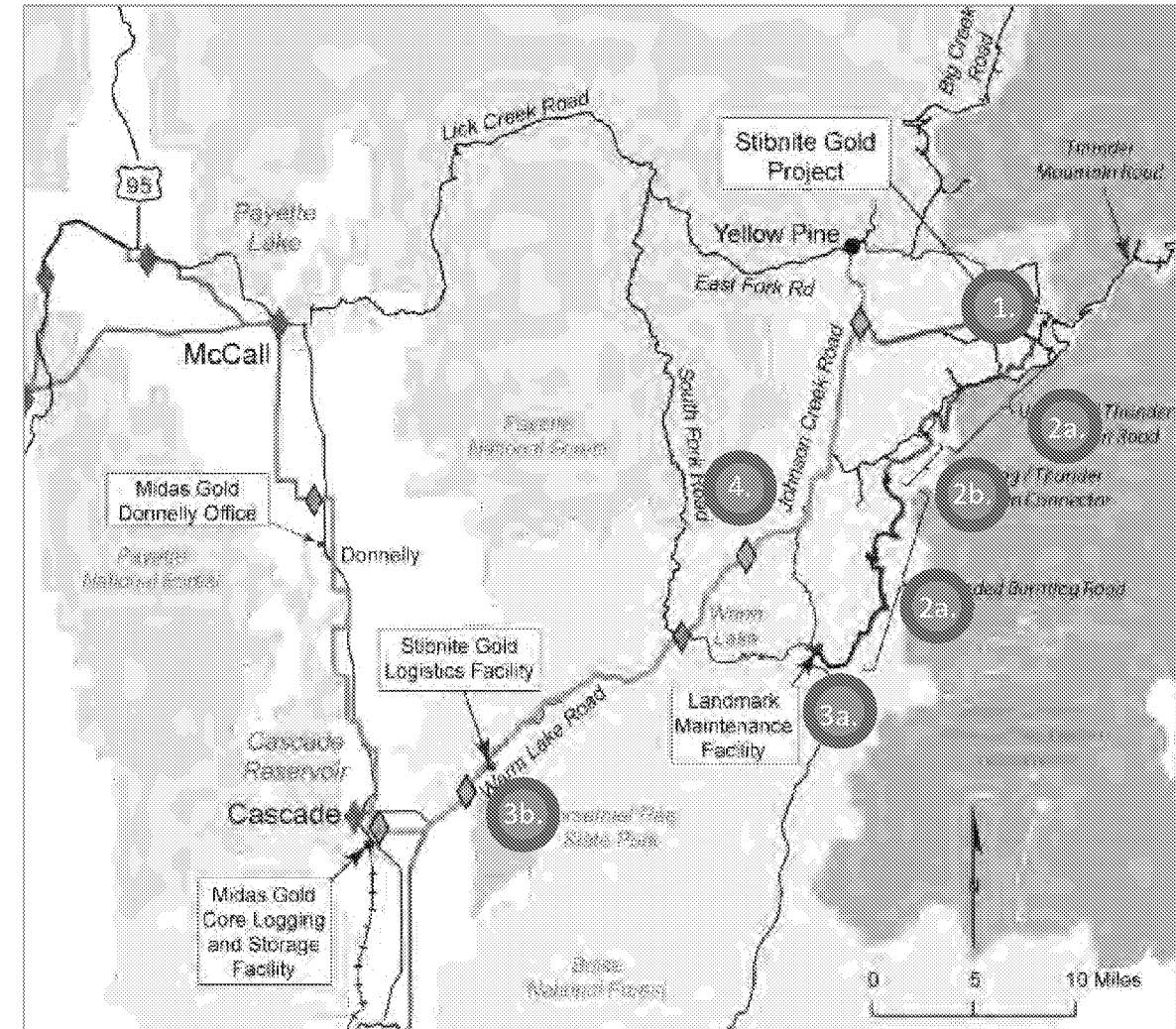
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NPDES QUESTIONS

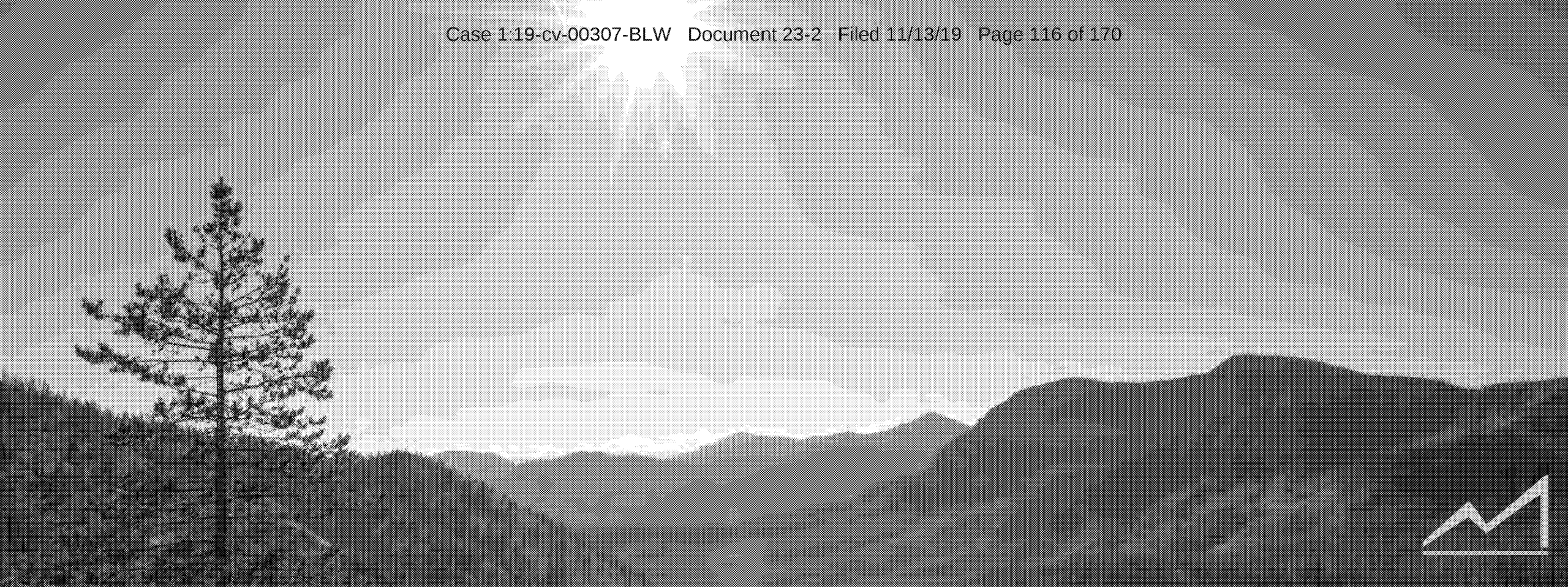


Our Questions on NPDES

1. Mine Site
2. Access Roads
 - a) Upgrades to BLR and Thunder Mountain Roads
 - b) New BLR
3. Ancillary Facilities
 - a) Landmark Maintenance Facility
 - b) Logistics Facility
4. Powerline and Substations
 - a) Idaho Power vs. Midas Gold



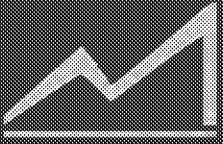
Draft - For Review Purposes Only Midas Gold, 2016 - Figure 7-1



ESA DISCUSSION

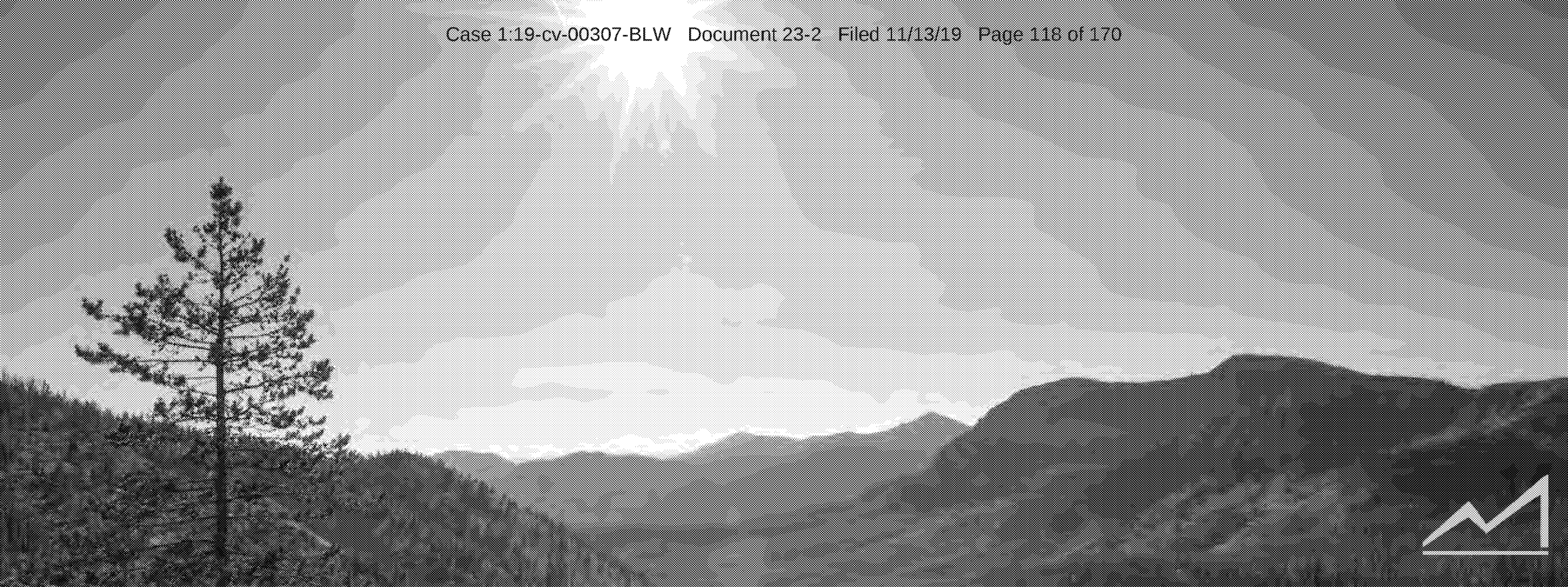
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ESA DISCUSSION



Our Understanding on ESA

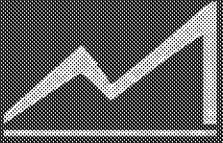
- Confirm single biological assessment (BA) to be used by all agencies for SGP
- EPA to use BA and USFWS and NOAA Fisheries biological opinions (BOs) for ESA compliance for New Source NPDES (402)
- Coordinate with EPA/IDEQ to ensure needed analysis for NPDES/401 are in BA
- Importance of Midas Gold engagement in ESA Section 7 information consultation
- Designation of Midas Gold as Non-Federal Representative (NFR)
- Revise and update Fisheries Mitigation Plan to address potential effects
- Any potential complications to ESA compliance due to delegation of CWA administration to Idaho



PATH FORWARD

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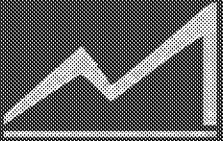
PATH FORWARD – NPDES



NPDES:

- Finalize site-wide water balance (SWWB) and chemistry (SWWC) Proposed Action modeling – Q2-18
- Update the NPDES Draft Application package with SWWB and SWWC results and incorporate details on water management and treatment – Q3-18
- Meet to discuss Draft Application prior to finalization and submittal – Q4-18
- Finalize and submit the NPDES Application package to the EPA – Q1-19
- Completeness review by EPA and Issuance of Requests for Additional Information (RFAs) – Q2-19
- Prepare and submit responses to RFA – Q2-19
- Review application and develop permit; Notice of Issuance of Permit – Q4-19

PATH FORWARD – ESA

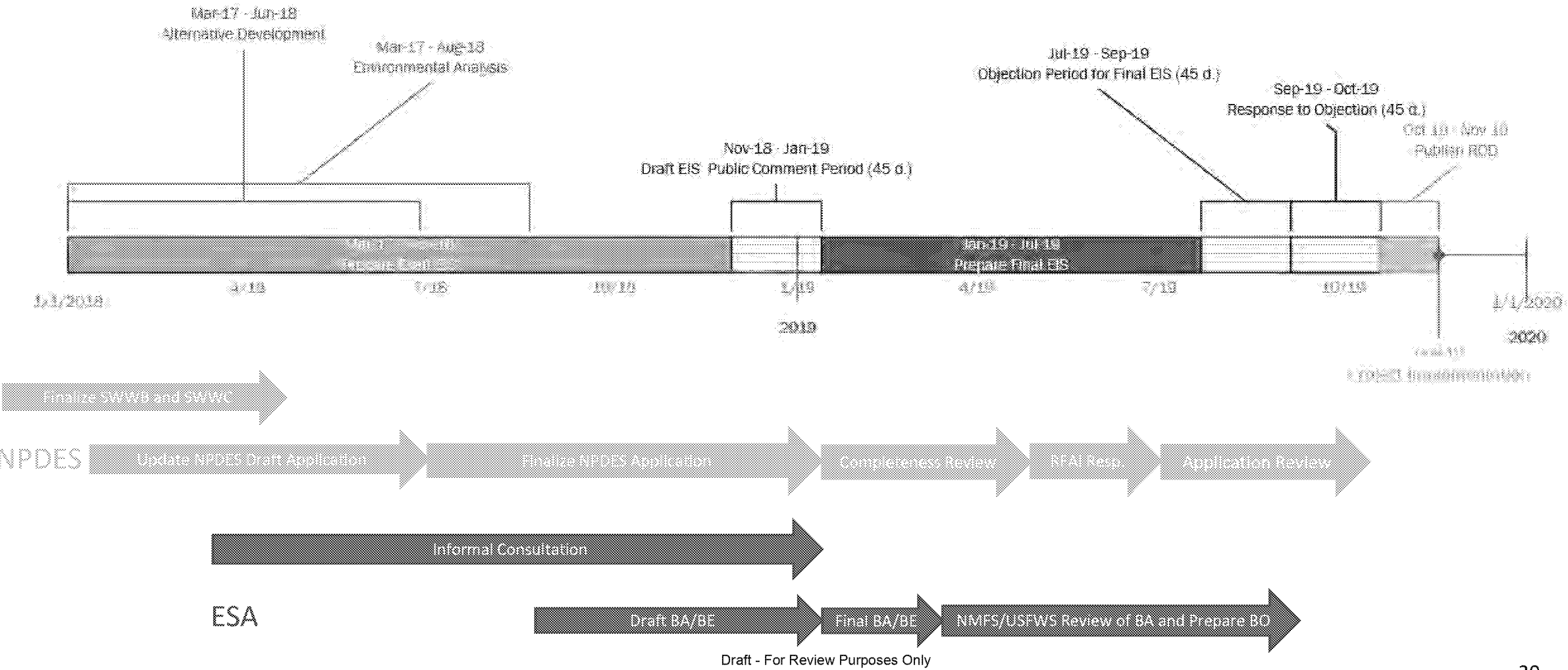
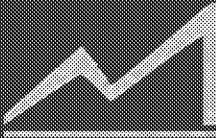


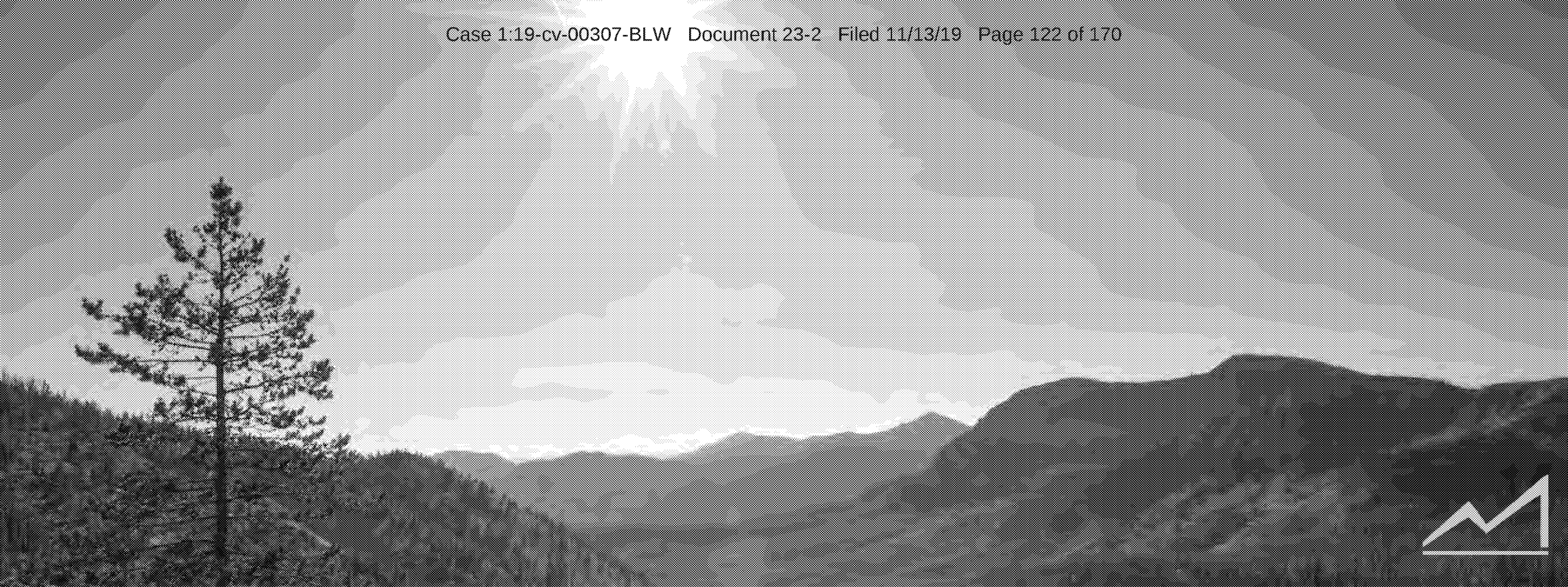
ESA:

- Midas Gold received designation as NFR – March 2018
- Engage with USFS/Agency Team on informal consultation process – Ongoing through Final BA – Q1-19
- Coordinate closely with IDEQ, EPA, and Services on water quantity and quality analysis needed in effects analysis in BA to support NPDES 402 and Section 401 WQC – Q2-19
- Continue to refine Fisheries Mitigation Plan supporting conservation of listed fish species – Draft Q3-18, Final Q1-19
- Respond to developing alternatives analysis – Q2-19
- Review of BA and prepare BO (by Services) – Q3-19



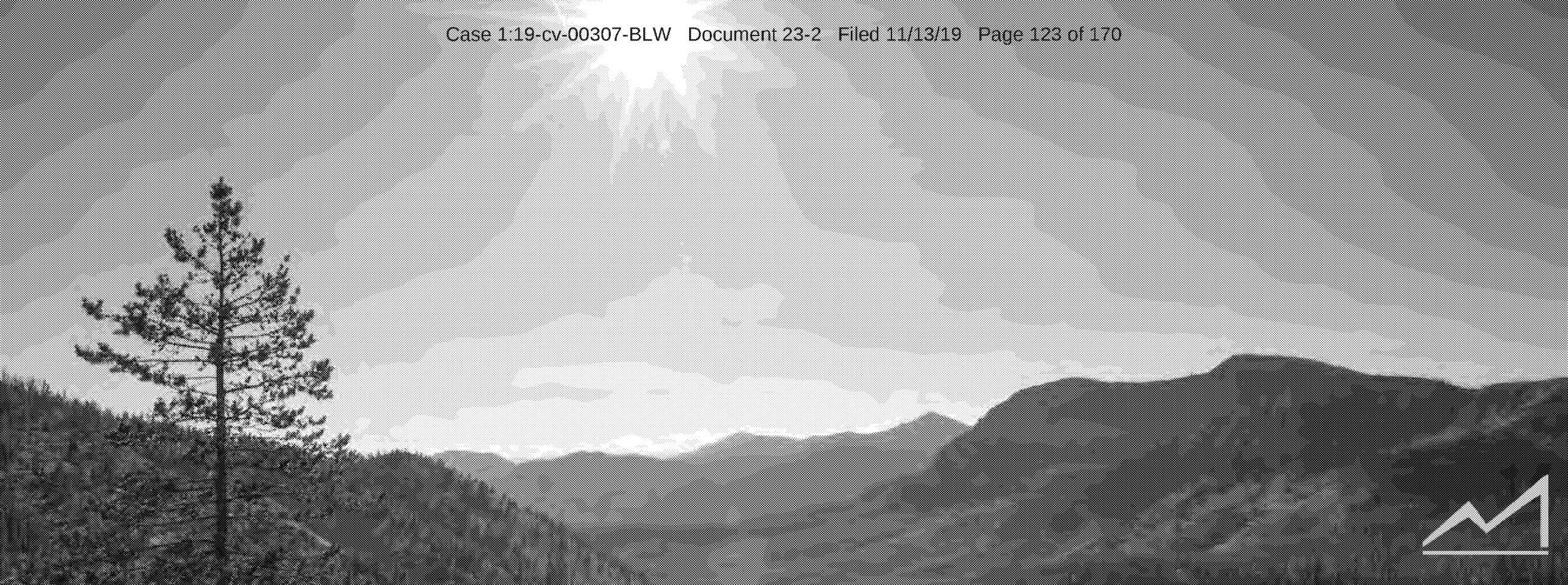
PERMITTING TIMELINE





UPDATE OF STATE AND FEDERAL INTERAGENCY SOCIALIZATION EFFORTS FOR SGP

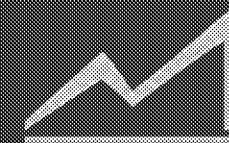
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DISCUSSION

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COMPLIANCE WITH NI 43-101



The technical information in this presentation (the “Technical Information”) has been approved by Stephen P. Quin, P. Geo., President & CEO of Midas Gold Corp. (together with its subsidiaries, “Midas Gold”) and a Qualified Person. Midas Gold’s exploration activities at Stibnite Gold were carried out under the supervision of Christopher Dail, C.P.G., Qualified Person and Exploration Manager and Richard Moses, C.P.G., Qualified Person and Site Operations Manager. **For readers to fully understand the information in this presentation, they should read the Pre-Feasibility Study Report (available on SEDAR or at www.midasgoldcorp.com) in its entirety (the “Technical Report”), including all qualifications, assumptions and exclusions that relate to the information set out in this presentation that qualifies the Technical Information. The Technical Report is intended to be read as a whole, and sections or summaries should not be read or relied upon out of context. The technical information in the Technical Report is subject to the assumptions and qualifications contained therein.**

Mineral resources that are not mineral reserves do not have demonstrated economic viability. Mineral resource estimates do not account for mineability, selectivity, mining loss and dilution. These mineral resource estimates include inferred mineral resources that are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorized as mineral reserves. There is also no certainty that these Inferred mineral resources will be converted to the Measured and Indicated categories through further drilling, or into mineral reserves, once economic considerations are applied.

Section 2.3 of NI 43-101 states that: Despite paragraph (1) (a), an issuer may disclose in writing the potential quantity and grade, expressed as ranges, of a target for further exploration if the disclosure

- (a) states with equal prominence that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to define a mineral resource and that it is uncertain if further exploration will result in the target being delineated as a mineral resource; and
- (b) states the basis on which the disclosed potential quantity and grade has been determined.

The mineral resources and mineral reserves at the Stibnite Gold Project are contained within areas that have seen historic disturbance resulting from prior mining activities. In order for Midas Gold to advance its interests at Stibnite, the Project will be subject to a number of federal, State and local laws and regulations and will require permits to conduct its activities. However, Midas Gold is not aware of any environmental, permitting, legal or other reasons that would prevent it from advancing the project.

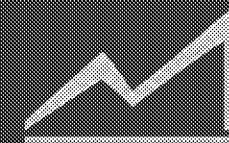
The PFS was compiled by M3 Engineering & Technology Corp. (“M3”) which was engaged by Midas Gold Corp.’s wholly owned subsidiary, Midas Gold, Inc. (“MGI”), to evaluate potential options for the possible redevelopment of the Stibnite Gold Project based on information available up to the date of the PFS. Givens Pursley LLP (land tenure), Kirkham Geosystems Ltd. (mineral resources), Blue Coast Metallurgy Ltd. (metallurgy), Pieterse Consulting, Inc. (autoclave), Independent Mining Consultants Inc. (mine plan and mineral reserves), Allen R. Anderson Metallurgical Engineer Inc. (recovery methods), HDR Engineering Inc. (access road), SPF Water Engineering, LLC (water rights) and Tierra Group International Ltd. (tailings, water management infrastructure and closure) also contributed to the PFS. Additional details of responsibilities are provided in the technical report filed on SEDAR in December 2014. The PFS supersedes and replaces the technical report entitled ‘Preliminary Economic Assessment Technical Report for the Golden Meadows Project, Idaho’ prepared by SRK Consulting (Canada) Inc. and dated September 21, 2012 (PEA) and that PEA should no longer be relied upon.

NON-IFRS REPORTING MEASURES

“Cash Costs”, “All-in Sustaining Costs” and “Total costs” are not Performance Measures reported in accordance with International Financial Reporting Standards (“IFRS”). These performance measures are included because these statistics are key performance measures that management uses to monitor performance. Management uses these statistics to assess how the Project ranks against its peer projects and to assess the overall effectiveness and efficiency of the contemplated mining operations. These performance measures do not have a meaning within IFRS and, therefore, amounts presented may not be comparable to similar data presented by other mining companies. These performance measures should not be considered in isolation as a substitute for measures of performance in accordance with IFRS.

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FORWARD LOOKING STATEMENTS



Statements contained in this presentation that are not historical facts are "forward-looking information" or "forward-looking statements" (collectively, "Forward-Looking Information") within the meaning of applicable Canadian securities legislation and the United States Private Securities Litigation Reform Act of 1995. Forward-Looking Information includes, but is not limited to, disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action; and the plans for completion of the Offerings, expected use of proceeds and business objectives. In certain cases, Forward-Looking Information can be identified by the use of words and phrases such as "anticipates", "expects", "understanding", "has agreed to" or variations of such words and phrases or statements that certain actions, events or results "would", "occur" or "be achieved". Although Midas Gold has attempted to identify important factors that could affect Midas Gold and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, Midas Gold does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this news release to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Forward-Looking Information involves known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Corporation to be materially different from any future results, performance or achievements expressed or implied by the Forward-Looking Information. Such risks and other factors include, among others, the industry-wide risks and project-specific risks identified in the 2014 prefeasibility study and summarized above; risks related to the availability of financing on commercially reasonable terms and the expected use of proceeds; operations and contractual obligations; changes in exploration programs based upon results of exploration; changes in estimated mineral reserves or mineral resources; future prices of metals; availability of third party contractors; availability of equipment; failure of equipment to operate as anticipated; accidents, effects of weather and other natural phenomena and other risks associated with the mineral exploration industry; environmental risks, including environmental matters under US federal and Idaho rules and regulations; impact of environmental remediation requirements and the terms of existing and potential consent decrees on the Corporation's planned exploration and development activities on the Stibnite Gold Project; certainty of mineral title; community relations; delays in obtaining governmental approvals or financing; fluctuations in mineral prices; the Corporation's dependence on one mineral project; the nature of mineral exploration and mining and the uncertain commercial viability of certain mineral deposits; the Corporation's lack of operating revenues; governmental regulations and the ability to obtain necessary licences and permits; risks related to mineral properties being subject to prior unregistered agreements, transfers or claims and other defects in title; currency fluctuations; changes in environmental laws and regulations and changes in the application of standards pursuant to existing laws and regulations which may increase costs of doing business and restrict operations; risks related to dependence on key personnel; and estimates used in financial statements proving to be incorrect; as well as those factors discussed in the Corporation's public disclosure record. Although the Corporation has attempted to identify important factors that could affect the Corporation and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, the Corporation does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this presentation to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

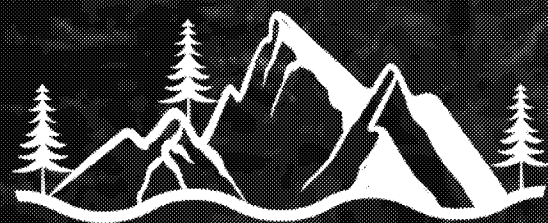
Cautionary Note

The presentation has been prepared by Midas Gold management and does not represent a recommendation to buy or sell these securities. Investors should always consult their investment advisors prior to making any investment decisions.

All references to "dollars" or "\$" shall mean United States dollars unless otherwise specified. Exchange rates and share prices used, where appropriate, are based on the spot prices as of Feb. 19th, 2016.

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THE STIBNITE GOLD PROJECT



SUPPORT STIBNITE

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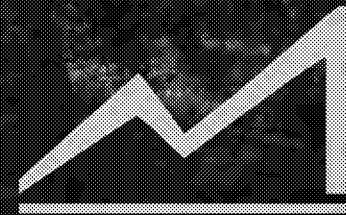


EXHIBIT 3

to

Declaration of Michael Bogert



100003402

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
AND
THE STATE OF SOUTH DAKOTA

2018 FEB 12 AM 8:13

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Gilt Edge Mine Site)
Lead, South Dakota)

Agnico Eagle Mines Limited,)

Lessee)

Proceeding Under the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9601-9675)
_____)

CERCLA Docket No. CERCLA-08-2018-0004

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR WORK**

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the State of South Dakota (State) and Agnico Eagle Mines Limited (Lessee). This Settlement provides for the performance of Work by Lessee and the payment of certain response costs incurred by the United States at or in connection with the property located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, known as the Gilt Edge Superfund Site (Site).

2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 – 9675. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. Lessee represents that it will meet all of the BFPP provisions in CERCLA §§ 101(40)(A)-(H) and 107(r)(1), 42 U.S.C. §§ 9601(40) (A)-(H) and 9607(r)(1) upon execution of a lease with the State of South Dakota, and that it will continue to comply with these requirements during the time in which it has an ownership (including leasehold) interest in the Site. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against Lessee as a consequence of Lessee's activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XX (Reservations of Rights by United States), any potential liability of Lessee under CERCLA for the Existing Contamination as defined by Paragraph 8 below.

4. EPA, the State, and Lessee recognize that this Settlement has been negotiated in good faith and Lessee agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA, the State, and upon Lessee and its successors and assigns. Any change in ownership or corporate status of Lessee including, but not limited to, any transfer of assets or real or personal property shall not alter Lessee's responsibilities under this Settlement.

6. Each undersigned representative of Lessee certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Lessee to this Settlement.

7. Lessee shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Lessee with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Lessee or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Lessee shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“BFPP” shall mean a bona fide prospective lessee as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXIX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“DENR” shall mean the South Dakota Department of Environment and Natural Resources and any successor departments or agencies of the State.

“Existing Contamination” shall mean:

- a. any hazardous substances, pollutants contaminants or Waste Materials present or existing on or under the Site as of the Effective Date;
- b. any hazardous substances, pollutants contaminants or Waste Materials that migrated from the Site prior to the Effective Date; and
- c. any hazardous substances, pollutants contaminants or Waste Materials presently at the Site that migrate onto or under or from the Site after the Effective Date.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that the United States and the State incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Section XIII (Emergency Response and Notification of Releases), Paragraph 80 (Work Takeover), Paragraph 98 (Access to Financial Assurance), Section XV (Dispute Resolution), and all litigation costs.

“Gilt Edge Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“Lessee” shall mean Agnico Eagle Mines Limited.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA, the State, and Lessee.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“RPM” shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Work and all appendices attached hereto (listed in Section XXX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Gilt Edge Mine Superfund Site, encompassing approximately 390 acres, located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, and depicted generally on the map attached as Appendix A.

“State” shall mean the State of South Dakota.

“Statement of Work” or “SOW” shall mean the document describing the activities Lessee must perform pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous substances” under South Dakota Chapter 34A-11.

“Work” shall mean all activities and obligations Lessee is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. STATEMENT OF FACTS

9. The Site is an abandoned gold mine located approximately 4.5 miles southeast of the town of Lead, in the northern Black Hills of Lawrence County, South Dakota.

10. Mining at the Site began in the late 1800s, and continued intermittently until 1999, when operator Brohm Mining Company (Brohm) became insolvent and abandoned the Site, leaving approximately 150 million gallons of acidic, lead, arsenic, and cadmium laden water in various open pits, as well as significant amounts of unsecured and uncontrolled acid generating waste rock.

11. In 2000, EPA added the Site to the National Priorities List, and divided the Site into three operable units (OUs).

12. Operable Unit 1 (OU1) is the primary mine disturbance area, and addresses existing contaminant sources within the primary mine disturbance area, such as acid generating waste rock and fills, spent ore, exposed acid generating bedrock, and sludge.

13. Operable Unit 2 (OU2) consists of water treatment, groundwater, and lower Strawberry Creek. This OU addresses (1) acid rock drainage, including acid rock drainage collection systems, pumping stations, pipelines, water treatment, and the future generation of acid rock drainage sludge; (2) groundwater contamination associated with the Site; and (3) contaminant sources, surface water and sediments in the lower Strawberry Creek area.

14. Operable Unit 3 (OU3) is the Ruby Gulch Waste Rock Dump. This OU addresses contaminant sources located within the Ruby Gulch waste rock dump.

15. EPA issued an Early Action Interim Record of Decision for OU2 in April 2001 to continue water treatment activities previously assumed by the State, followed by an Interim Record of Decision for OU2 in November 2001. The interim OU2 remedy included additional collection of acid rock drainage and construction of a new water treatment plant to treat contaminated waters generated at the Site. The Site currently generates an average of 95 million

gallons of acid rock drainage per year, which is collected and treated before discharge into Strawberry Creek.

16. EPA's investigation of the releases of hazardous substances in OU2 is ongoing.

17. EPA issued an Interim Record of Decision for OU3 in August, 2001 to address contamination associated with the largest acid rock drainage source on the Site, the Ruby Gulch Waste Rock Dump.

18. EPA issued a Record of Decision for OU1 in 2008, and selected a remedy focused on containment of contaminant sources within the primary disturbance area. In 2014, EPA issued an Explanation of Significant Differences, modifying the Record of Decision to further reduce the volume of acid rock drainage generated at the Site. Construction on the OU1 remedy began 2017.

19. The Lessee is a Canadian company doing business in the State of South Dakota.

V. DETERMINATIONS

20. Based on the Statement of Facts set forth above, EPA has determined that:

a. The Gilt Edge Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Lessee is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Statements of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

21. Based upon the Statements of Facts and Determinations set forth above, it is hereby Ordered and Agreed that Lessee shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND
REMEDIAL PROJECT MANAGER**

22. Lessee may retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 7 days after the Effective Date. Lessee shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Lessee. If EPA disapproves of a selected contractor or subcontractor, Lessee shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 7 days after EPA's disapproval. With respect to any proposed contractor performing activities related to the Work, Lessee shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Lessee shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

23. Lessee has designated, and EPA has approved, Sandor Ringhoffer as its Project Coordinator who shall be responsible for administration of all actions by Lessee required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA and retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 22. If EPA disapproves of the designated Project Coordinator, Lessee shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 7 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Lessee's Project Coordinator shall constitute notice or communication to Lessee.

24. EPA has designated Joy Jenkins of the Superfund Remedial Program, as its Remedial Project Manager (RPM). EPA and Lessee shall have the right, subject to Paragraph 23, to change their respective designated RPM or Project Coordinator. Lessee shall notify EPA 7 days before such a change is made. The initial notification by Lessee may be made orally, but shall be promptly followed by a written notice.

25. The RPM shall be responsible for overseeing Lessee's implementation of this Settlement. The RPM shall have the authority stated in the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. WORK TO BE PERFORMED

26. Lessee shall perform, at a minimum, all actions necessary to implement the SOW, and approved Work Plans, which comprise studies to determine sources of cadmium contamination found in lower Strawberry Creek. The SOW and approved Work Plans will include a hydrogeological study of fracture zone and groundwater flow, and a study of sediments and potential near surface sources along lower Strawberry Creek. The activities are anticipated to assist EPA and the State in future remedy selection. Lessee shall develop technical reports to document the findings of the studies that will be used in the future development by EPA of a final remedial investigation for OU2. Specific activities include the following:

- a. Subsurface-Hydrogeological Investigation: Borehole drilling and logging, collection of core samples, subsurface measurements that may include borehole imaging such as video, sonar, or other downhole monitoring technologies. Geochemical characterization of core samples, including acid base accounting (ABA). Abandonment of boreholes, once data collection is complete, will require complete sealing and grouting the length of the borehole.
- b. Strawberry Creek Surface Source Investigation: Data collection for surface and near surface sources may include topographical surveys such as Light Detection and Ranging (LIDAR), and walking surveys, sediment and soil sampling for geochemical characterization including ABA, water sampling, flow monitoring, and weather monitoring (station installation).
- c. Site Facility Upgrades: Site facility upgrades or improvements to be implemented by Lessee to accommodate requirements for office space, communications, and data processing for the purposes of supporting the investigations described above.

27. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Lessee receives notification from EPA of the modification, amendment, or replacement.

28. Work Plans and Implementation

a. Within 7 days after the Effective Date, in accordance with Paragraph 29 (Submission of Deliverables), Lessee shall submit to EPA for approval a draft work plan to implement the SOW generally described in Paragraph 26(a) above. Within 30 days after the Effective Date, in accordance with Paragraph 29 (Submission of Deliverables), Lessee shall submit to EPA for approval a draft work plan to implement the SOW generally described in Paragraph 26(b) and 26(c) above. The Work implementing the SOWs generally described in Paragraph 26(a), 26(b), and 26(c) is collectively referred to as the "Work Plans." The draft Work Plans shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify each draft Work Plan in whole or in part. If EPA requires revisions, Lessee shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions. Lessee shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plans, Lessee shall commence implementation of the Work in accordance with the schedule included therein. Lessee shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

29. Submission of Deliverables

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, Lessee shall direct all submissions required by this Settlement to the RPM by email at jenkins.joy@epa.gov or mail to:

Joy Jenkins
US Environmental Protection Agency Region 8
8EPR-SR
1595 Wynkoop St.
Denver, CO 80202

and the State at:

Mark Lawrensen
South Dakota Department of Environment and Natural Resources
523 East Capitol Ave.
Pierre, South Dakota 57501-3182

Lessee shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Lessee shall submit all deliverables in electronic form and paper copies of all final versions of reports, SAP, QAPP, maps and figures shall also be submitted to EPA and the State. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 29.b. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any

deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Lessee shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Submission of Environmental Data.

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format as found in the Region 8 Data Management Plan Guidance (2017, or most current version at start of Work). Environmental data will be entered into SCRIB by EPA or EPA contractors for data management. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted in accordance with the US EPA Region 8 GIS Deliverable Guidance (May 24, 2017, or most current version at start of Work).

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Lessee does not, and is not intended to, define the boundaries of the Site.

30. Health and Safety Plan. In accordance with the schedule set forth in the SOW, Lessee shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning for potential mine impacted water releases. EPA may comment and make recommendation to the Health and Safety Plan, however, Lessee assumes full responsibility to adhere to applicable OSHA regulations. Lessee shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the response action.

31. Quality Assurance, Sampling, and Data Analysis

a. Lessee shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all environmental samples collected related to the Work consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project

Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), or “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 7 days after the Effective Date, Lessee shall submit a Sampling and Analysis Plan related to the Work to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), or “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement. For current Region 8 QA requirements and guidance, refer to <https://www.epa.gov/quality/managing-quality-environmental-data-epa-region-8>.

c. Lessee shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Lessee in implementing this Settlement. In addition, Lessee shall ensure that such laboratories shall analyze pursuant to this Settlement all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that environmental sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Lessee shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamtl1/airtox.html>). It is anticipated that assay tests of the borehole core samples will not be covered by EPA or standard environmental methods. Other specialized tests may be performed by Lessee for Lessee’s own purposes.

d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Lessee may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Lessee shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies

with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Lessee shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Lessee shall provide split or duplicate environmental samples related to the Work to EPA and the State or their authorized representatives. Lessee shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples related to the Work that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Lessee split or duplicate samples of any samples they take as part of EPA's oversight of Lessee's implementation of the Work.

f. Other than resource related data associated with the exploration activities, Lessee shall submit to EPA and the State results of all sampling and/or tests or other data obtained or generated by or on behalf of Lessee with respect to the Site and/or the implementation of this Settlement.

32. Progress Reports. Lessee shall submit a written monthly progress report to EPA and the State concerning actions undertaken pursuant to this Settlement, or as otherwise requested by EPA, from 30 days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

33. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 104 (Notice of Completion), Lessee shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The format of the final report or reports is included in the SOW. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work

(e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Lessee or Lessee's Project Coordinator: "I certify under penalty of law that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this document and all attachments, the information submitted is true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

34. Off-Site Shipments and Wastes Generated On-Site

a. Lessee may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Lessee will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Lessee obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Lessee may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Lessee also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Lessee shall provide the written notice after the award of the contract for the Work and before the Waste Material is shipped.

c. Lessee may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

d. Certain investigation-derived waste generated from drilling activities such as water collected in the solid removal unit (SRU) and borehole cuttings that are not collected as samples may be disposed of in the on-Site sludge repository with prior written approval from the RPM with concurrence from the State. If drilling occurs on undisturbed ground without pre-existing mining waste, sumps must be lined and sump water collected for disposal or tested to verify compliance with State surface water quality standards before discharge to the ground.

Drill cuttings must also be collected and disposed of if drilling is conducted on undisturbed ground.

IX. PROPERTY REQUIREMENTS

35. Lessee agrees to provide the State, EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property owned or controlled by Lessee to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to Lessee of the timing of response actions to be undertaken at the Site and other areas owned or controlled by Lessee. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.

36. For so long as Lessee is a tenant of the Property, Lessee shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to the State, EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Lessee shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with the Work, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site.

37. Lessee shall provide a copy of this Settlement to any current, sublessee, and other party with rights to use the Site as of the Effective Date.

38. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

39. Lessee shall, subject to the record retention period in Paragraph 43 and, if necessary, in accordance with Paragraph 40, provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Lessee's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Lessee shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

40. Privileged and Protected Claims

a. Lessee may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Lessee complies with Paragraph 40.b, and except as provided in Paragraph 40.c.

b. If Lessee asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Lessee shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Lessee shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Lessee's favor.

c. Except for Business Confidential Claims permitted in Paragraph 41, Lessee may make no claim of privilege or protection regarding: (1) any data, other than non-environmental data, regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Lessee is required to create or generate pursuant to this Settlement.

41. Business Confidential Claims. Lessee may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Lessee shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Lessee asserts business confidentiality claims. Records that Lessee claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Lessee that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Lessee.

42. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

43. Until ten (10) years after EPA provides Lessee with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Lessee shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to Lessee's representations of the BFPP provisions of CERCLA §§ 101(40)(A)-(H) and 107(r)(1), 42 U.S.C. §§ 9601 (40)(A)-(H) and

9607(r)(1) with regard to the Site, provided, however, that a Lessee who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Lessee must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Lessee (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

44. At the conclusion of the document retention period, Lessee shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 40 (Privileged and Protected Claims), Lessee shall deliver any such Records to EPA.

45. Lessee certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

47. Nothing in this Settlement limits Lessee's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Lessee shall identify ARARs in the Work Plan subject to EPA approval.

48. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Lessee shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Lessee may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and

taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

49. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Lessee shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Lessee shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Lessee shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788 of the incident or Site conditions. The Lessee shall also notify the State in accordance with Section XXXIII (Notices). In the event that Lessee fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Lessee shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Future Response Costs).

50. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Lessee is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Lessee shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

51. For any event covered under this Section, Lessee shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF FUTURE RESPONSE COSTS

52. Payments for Future Response Costs. Lessee shall pay to EPA all Future Response Costs not inconsistent with the NCP.

- a. **Periodic Bills.** On a periodic basis, EPA will send Lessee an electronic billing notification to the following email address:
gregg.loptien@agnicoeagle.com

The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors. Lessee shall make all payments within 30 days of receipt of the electronic bill, except otherwise provided in Paragraph 53 (Contesting Future Response Costs). Lessee shall make payments using one of the payment methods set forth in the electronic billing notification.

Lessee may change its email billing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

If the electronic billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Lessee to:

Gregg Loptien
Agnico Eagle Mines Ltd. (USA)
1675 East Prater Way, Suite 102
Sparks, Nevada 89434

b. At the time of each payment, Lessee shall send notice that such payment has been made to RPM and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, and to mcguffey.elizabeth@epa.gov and shall reference Site/Spill ID Number 087T and the EPA docket number for this action.

c. Deposit of Future Response Costs Payments. The total amount to be paid by Lessee pursuant to Paragraph 52 may be deposited by EPA in the Gilt Edge Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit any Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Gilt Edge Mine Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Lessee pursuant to the dispute resolution provisions of this Settlement or in any other forum.

d. Interest. In the event that any payment for Future Response Costs is not made within thirty (30) days of Lessee's receipt of a bill, Lessee shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill. The Interest shall continue to accrue through the date of Lessee's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Lessee's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

53. Contesting Future Response Costs. Lessee may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under

Paragraph 52 (Payments of Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Lessee shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Lessee submits a Notice of Dispute, Lessee shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 52, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Lessee shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 52. If Lessee prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 52. Lessee shall be disbursed any balance of the escrow account within 5 days after the resolution of the dispute. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Lessee's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

55. Informal Dispute Resolution. If Lessee objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action. EPA and Lessee shall have 30 days from EPA's receipt of Lessee's Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

56. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Lessee shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a

statement of position. Thereafter, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to Lessee. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Lessee shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

57. Except as provided in Paragraph 53 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Lessee under this Settlement. Except as provided in Paragraph 53, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Lessee does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

58. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Lessee, of any entity controlled by Lessee, or of Lessee's contractors that delays or prevents the performance of any obligation under this Settlement despite Lessee's best efforts to fulfill the obligation. The requirement that Lessee exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Lessee intends or may intend to assert a claim of force majeure, Lessee shall notify EPA's RPM orally or, in her absence, the Director of the Superfund Remedial Program, EPA Region 8, within 10 days of when Lessee first knew that the event might cause a delay. Within 5 days thereafter, Lessee shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Lessee's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Lessee, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Lessee shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Lessee shall be deemed to know of any circumstance of which Lessee, any entity controlled by Lessee, or Lessee's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Lessee from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 58 and whether Lessee

has exercised their best efforts under Paragraph 58, EPA may, in its unreviewable discretion, excuse in writing Lessee's failure to submit timely or complete notices under this Paragraph.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Lessee in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Lessee in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure

61. If Lessee elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Lessee shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Lessee complied with the requirements of Paragraphs 58 and 59. If Lessee carries this burden, the delay at issue shall be deemed not to be a violation by Lessee of the affected obligation of this Settlement identified to EPA.

62. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Lessee from meeting one or more deadlines under the Settlement, Lessee may seek relief under this Section.

XVII. STIPULATED PENALTIES

63. Lessee shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 64 and 65 for failure to comply with the obligations specified in Paragraphs 64.b and 65, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence include compliance by Lessee with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

64. Stipulated Penalty Amounts – Payments, Financial Assurance

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 64.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

b. Obligations

- (1) Payment of any amount due under Section XIV (Payment of Future Response Costs).
- (2) Establishment and maintenance of financial assurance in accordance with Section XXVI (Financial Assurance).
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 53 (Contesting Future Response Costs).

65. Stipulated Penalty Amounts – Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 64.a:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

66. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 80 (Work Takeover), Lessee shall be liable for a stipulated penalty in the amount of \$ 10,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 80 (Work Takeover) and 98 (Access to Financial Assurance).

67. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 28 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Lessee of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Director level or higher, under Paragraph 56 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

68. Following EPA's determination that Lessee has failed to comply with a requirement of this Settlement, EPA may give Lessee written notification of the failure and describe the noncompliance. EPA may send Lessee a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Lessee of a violation.

69. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Lessee's receipt from EPA of a demand for payment of the penalties, unless Lessee invokes the Dispute Resolution procedures under Section XII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 52 (Payments for Future Response Costs).

70. If Lessee fails to pay stipulated penalties when due, Lessee shall pay Interest on the unpaid stipulated penalties as follows: (a) if Lessee timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 52.d until the date of payment; and (b) if Lessee fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 52 until the date of payment. If Lessee fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

71. The payment of penalties and Interest, if any, shall not alter in any way Lessee's obligation to complete the performance of the Work required under this Settlement.

72. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or the State to seek any other remedies or sanctions available by virtue of Lessee's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, (Reservation of Rights by the United States), Paragraph 80.

73. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. CERTIFICATION

74. By entering into this Settlement, Lessee certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Lessee and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. Lessee also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. Lessee further certifies to the representations made under Paragraph 3.

XIX. COVENANTS BY UNITED STATES AND THE STATE

75. Except as provided in Section XX (Reservations of Rights by United States), the United States and the State covenant not to sue or to take administrative action against Lessee

pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Existing Contamination, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Lessee of their obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Lessee relating to Lessee's Work at the Site and the certification made by Lessee in Paragraph 74. This covenant extends only to Lessee and does not extend to any other person.

76. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State to seek or obtain further relief from Lessee, if the information provided to EPA by Lessee relating to Lessee's Work at the Site, or the certification made by Lessee in Paragraph 74, is false or in any material respect, inaccurate.

XX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE

77. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States and/or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States and/or the State from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary.

78. The covenants set forth in Section XIX (Covenants by the United States and the State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against Lessee with respect to all other matters, including, but not limited to:

- a. liability for failure by Lessee to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for violations of federal or state law that occur during or after implementation of the Work;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from exacerbation of Existing Contamination not associated with the Work by Lessee, its successors, assigns, lessees, or sublessees; and

- g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

79. With respect to any claim or cause of action asserted by the United States, Lessee shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Lessee has complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(1).

80. Work Takeover

a. In the event EPA determines that Lessee: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Lessee. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Lessee a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in Paragraph 80.a, Lessee has not remedied or begun to remedy to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Lessee in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 80.b.

c. Lessee may invoke the procedures set forth in Section XII (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 80.b. However, notwithstanding Lessee invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 80.b until the earlier of (1) the date that Lessee remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 56 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANTS BY LESSEE

81. Lessee covenants not to sue and agrees not to assert any claims or causes of action against the State, the United States, or their contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs, and this Settlement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of South Dakota Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding, the Work, Future Response Costs, and this Settlement.

82. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XX (Reservations of Rights by the United States and the State), other than in Paragraph 78.a (liability for failure to meet a requirement of the Settlement), 78.b (criminal liability), or 78.c (violations of federal/state law during or after implementation of the Work), but only to the extent that Lessee's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

83. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

84. Lessee reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Lessee's deliverables or activities.

85. Lessee reserves, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing Contamination and that Lessee has complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(1).

XXII. OTHER CLAIMS

86. By issuance of this Settlement, the United States, the State, and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Lessee. The United States, the State, and EPA shall not be deemed a party to any contract entered into by Lessee or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

87. Except as expressly provided in Section XIX (Covenants by the United States and the State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Lessee or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

88. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

89. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXI (Covenants by Lessee), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

90. If a suit or claim for contribution is brought against Lessee with respect to Existing Contamination (including any claim based on the contention that Lessee is liable as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Lessee has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Existing Contamination, and Future Response Costs.

91. Lessee shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Lessee shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Lessee shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXIV. INDEMNIFICATION

92. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Lessee as EPA's authorized representatives under

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Lessee shall indemnify, save, and hold harmless the United States and the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Lessee, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Lessee's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Lessee agrees to pay the United States and the State all costs they incur, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Lessee, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Lessee in carrying out activities pursuant to this Settlement. Neither Lessee nor any such contractor shall be considered an agent of the United States or the State.

93. The United States shall give Lessee notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Lessee prior to settling such claim.

94. Lessee covenants not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Lessee and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Lessee shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Lessee and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

95. No later than 14 days before commencing any on-site Work, Lessee shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Lessee pursuant to this Settlement. In addition, for the duration of the Settlement, Lessee shall provide EPA with certificates of such insurance and a copy of each insurance policy. Lessee shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Lessee shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and

regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Lessee in furtherance of this Settlement. If Lessee demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Lessee need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Lessee shall ensure that all submittals to EPA under this Paragraph identify the Gilt Edge Mine Site name and the EPA docket number for this action.

XXVI. FINANCIAL ASSURANCE

96. In order to ensure completion of the Work, Lessee shall secure financial assurance, initially in the amount of \$ 1.5 million (Estimated Cost of the Work), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Lessee may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

97. Lessee shall submit such mechanisms and documents to the Regional financial assurance specialist at the following address:

Daniela Golden, ENF-RC
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
Golden.daniela@epa.gov.

98. Lessee shall diligently monitor the adequacy of the financial assurance. If Lessee becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Lessee shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Lessee of such determination. Lessee shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Lessee, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Lessee shall follow the procedures of Paragraph 99 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Lessee's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Lessee to complete the Work in accordance with the terms of this Settlement.

99. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 80, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 98.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the Lessee fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 98.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 80, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 95.e, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Lessee shall, within 7 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Gilt Edge Mine Site Special Account within the EPA

Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs, not inconsistent with the NCP, and not paid under this Paragraph must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

100. **Modification of Amount, Form, or Terms of Financial Assurance.** Lessee may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 99, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Lessee of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Lessee may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Lessee pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Lessee shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 96.

101. **Release, Cancellation, or Discontinuation of Financial Assurance.** Lessee may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVII. MODIFICATION

102. EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

103. If Lessee seeks permission to deviate from any approved Work Plan or schedule or the SOW, Lessee's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Lessee may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 101.

104. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Lessee shall relieve Lessee of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

105. When EPA, in consultation with the State, determines, after review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to Lessee. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Lessee, provide a list of the deficiencies, and require that Lessee modify the Work Plans if appropriate in order to correct such deficiencies. Lessee shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by Lessee to implement the approved modified Work Plan shall be a violation of this Settlement.

XXIX. PUBLIC COMMENT

106. This Settlement shall be subject to a thirty (30) day public comment period, after which EPA may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXX. INTEGRATION/APPENDICES

107. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix A is a map of the Site.
- b. Appendix B is the SOW.

XXXI. EFFECTIVE DATE

108. The effective date of this Settlement shall be the date upon which EPA issues written notice to Lessee that EPA has fully executed the Settlement after review of and response to any public comments received. If, by the time EPA issues such notice to Lessee, and Lessee has yet not executed a lease with the State of South Dakota, the effective date of this Settlement shall be the date upon which Lessee and the State of South Dakota execute such lease.

XXXII. DISCLAIMER

109. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XXXIII. NOTICES AND SUBMISSIONS

110. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Lessee shall be addressed to:

Greg Loptien
Agnico Eagle Mines Ltd. (USA)
1675 East Prater Way, Suite 102
Sparks, Nevada 89434

With copies to:

Chris Vollmershausen
Agnico Eagle Mines Limited
145 King Street East, Suite 400
Toronto, Ontario, Canada
M5C 2V7

and

Hal J. Pos
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

All submissions to U.S. EPA shall be addressed to:

Joy Jenkins, EPR-SR
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
Jenkins.joy@epa.gov

With electronic copies to:

Piggott.amelia@epa.gov

All submissions to the State shall be addressed to:

Mark Lawrensen
South Dakota Department of Environment and Natural Resources
523 East Capitol Ave.
Pierre, South Dakota 57501-3182
Mark.lawrensen@state.sd.us


With electronic copies to

Rich.williams@state.sd.us


IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:


Betsy Smidinger
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. EPA Region 8

2/9/18
Date


Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA Region 8

2/9/18
Date

IT IS SO AGREED:
STATE OF SOUTH DAKOTA
BY:



Steven M. Pirner

Secretary

South Dakota Department of Environment and Natural Resources

523 East Capitol Ave.

Pierre, South Dakota 57501-3182

12/27/17

Date



Richard M. Williams

Deputy Attorney General

1302 East Highway 14, Suite 1

Pierre, South Dakota 57501-5070

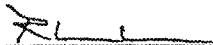
12-27-17

Date

The undersigned representative of Lessee certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:

BY:

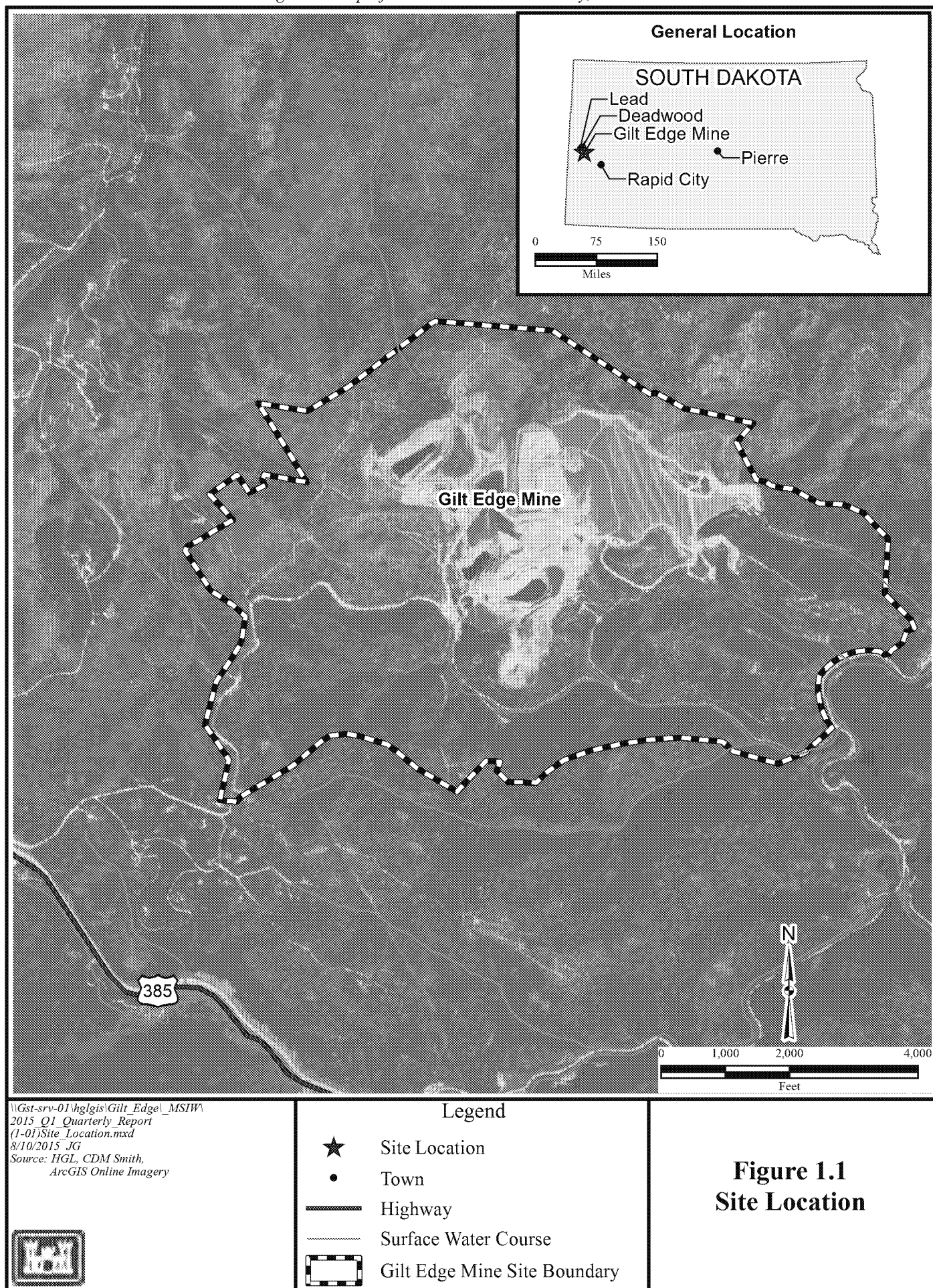


Name (Lessee) Date

R. Gregory Laing
General Counsel, SVP Legal and
Corporate Secretary

Appendix A

Site Location Map



Appendix B

Statement of Work

**APPENDIX B – STATEMENT OF WORK
ADMINISTRATIVE SETTLEMENT AND AGREEMENT
AND ORDER ON CONSENT FOR WORK GILT EDGE MINE**

Purpose:

The purpose and objective of the work described by this Statement of Work is to obtain information that furthers the understanding of the Gilt Edge Mine Superfund Site's subsurface conditions and potential sources of cadmium contamination to lower Strawberry Creek. This information is anticipated to be used by EPA and the State of South Dakota in the future to develop appropriate response actions to address the cadmium source(s). Work will include a hydrogeological study of fracture zones and groundwater flow, a study of sediments and potential near surface sources along lower Strawberry Creek, and facility upgrades to support the field activities. Technical reports will be developed to document the findings of the studies. These reports are anticipated to be incorporated by EPA into the future development of a final remedial investigation for OU2.

This Statement of Work describes the following activities Lessee must perform pursuant to Paragraph 26 of the Settlement Agreement and Order on Consent for Work (Agreement). Further details of work activities will be included in work plans that will be approved by the RPM in consultation with the State Project Manager.

I. Subsurface-Hydrogeological Investigation:

Acquire, through diamond core drilling methods, subsurface geotechnical, structural, geochemical and hydrologic data using downhole logging instruments that may include one or more of the following methods based on the effectiveness, applicability and quality of data obtained by each:

A. Downhole optical televiewer, which collects subsurface borehole structural data that can be analyzed using statistical tools which can include diagrams, stereonets, aperture, fracture-density and 3D projections of the dominate fracture networks. The data will be supported and validated with detailed, traditional geologic core logging methods. The optical televiewer captures following types of data:

1. Fracture orientation and evaluation
2. Visual observation of sulfide distribution
3. Bedding / fracture / fault dips
4. Lithological characterization
5. Borehole deviation

B. A Corehole Dynamic Flowmeter™ (CDFM™), which measures fluid flow rates, fluid conductivity and temperature in open, saturated sections of boreholes. The probe collects fracture-specific flow rates, fracture-specific permeabilities and fracture-specific head (water level).

C. Acoustical logging, which uses high frequency sound waves that can gather information such as formation water velocity, rock/structure permeability, fracture identification, rock strength properties, deposition environment and porosity.

D. Electrical / Magnetism, which can be used to evaluate stratigraphic correlations, lithology and mineral identification, shale/clay content, porosity, and formation water quality.

The data, once acquired for all the planned boreholes, will be supplemented with traditional core logging methods, geochemical analysis and then will be compiled into the existing geologic model. Upon completion of data compilation, the relevant information will be interpreted, and summarized into a final report.

Boreholes will be abandoned pursuant to South Dakota DENR borehole abandonment regulations 74:02:04:67.

II. Strawberry Creek Surface Source Investigation:

A. LIDAR, which stands for Light Detection and Ranging, is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses – combined with other data recorded by the airborne system – generate precise, three-dimensional information about the shape of the Earth and its surface characteristics. This method creates a 3D point cloud of digital data which can effectively “see” through a pine forest canopy. LIDAR can effectively map historic mine dumps, adits, surface disturbance in addition to possibly mapping subtle geologic structures that may be masked by soil or thick tree cover. The LIDAR point data can be used to generate a base topographic map to act as an overlay for field mapping data from the Strawberry Creek tailings mapping program described in item B below. The LIDAR may also potentially identify anomalous areas of tailings deposition or other historic, human activities that may exist along the drainage.

B. Strawberry Creek Tailings Mapping / Sampling Program – Strawberry Creek has been impacted by historic mining since the late 1870’s, and was the site of a modern heap leach mine in operation between 1987 through 1999. An unknown, but significant amount of historic mill tailings from several old mills, the largest of which was located at the south end of the Sunday Pit, discharged, and later stacked tailings directly into, and adjacent to the creek. Most of the historic tailings pile that existed prior to Brohm’s activities were removed from the north bank of the creek and deposited in the spent ore repository. Based on field observations, there are additional volumes of tailings located along the Strawberry Creek drainage which are now covered and/or naturally reclaimed but which may still be affecting water quality due to erosion and re-deposition during high water events. The purpose of the program is to map in detail the locations of any significant areas of tailings, estimate (if possible) the volume of tailings, and collect samples to determine if they may be contributing low levels of cadmium or other metals to surface and shallow groundwater.

C. Installation of an automated weather monitoring station for collection of site specific weather and precipitation events.

III. Site Facility Upgrades or Improvements:

A. Upgrading of Site internet/communication systems including a hard wired cable connection and upgraded phone system to facilitate communications and data processing for the completion of the various projects described in items I and II above.

B. Renovate Site office with new flooring and windows and other office/infrastructure improvements to accommodate requirements for office space and/or storage

for the purpose of supporting work described in I and II above as well as potential future remedial work at the Site.

IV. Plans and Reporting

Various Plans and Deliverables are required per the Agreement. Specific deliverables and reporting are highlighted here.

A. Required Plans Include:

1. Health and Safety Plan
2. Quality Assurance Project Plan/Sampling Analysis Plan
3. Hydraulic Hazard Potential evaluation memorandum

B. Deliverables Include:

1. Environmental Data
2. Geospatial Data
3. Final Investigation Report

Report will describe the studies conducted, the data collected, evaluation of the data, and conclusions drawn from the data with respect to the subsurface conditions and surface and near surface sources of cadmium to lower Strawberry Creek. Report to include maps, graphs, charts and other visual presentations of the data collected.